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THE OFFICIAL MONTH IN REVIEW

THE President on New Year's Day inducted into office General Carlos P. Romulo as Ambassador to Washington, Judge Oscar Castelo as Secretary of Justice, and Aurelio Montinola as Secretary of Finance in the presence of Cabinet members and members of the diplomatic corps. In the afternoon the President administered the oath of office to Mayor Arsenio H. Lacson and councilors of Manila, after which he also swore into office Col. Dionisio Ojeda as acting Chief of Police of Manila. The President told the city officials to maintain a clean, strong, efficient, and honest government. "We have to assume joint responsibility in running the government of the City of Manila," he pointed out.

In the evening, the President suspended anew Governor Rafael Lacson of Negros Occidental during the pendency of the criminal case against the Governor "or until further advice." Provincial Treasurer Leon C. Miraflores was redesignated as acting Governor during Lacson's suspension. Mayor Jose Gayona, Jr. of Magallon, Claudio Montilla of Isabela, and Manuel Ramos of Castellana, all of Negros Occidental, were also suspended anew.

IMMEDIATELY after breakfast on January 2, the President swore in former Finance Secretary Pio Pedrosa as ad interim chairman of the Board of Directors of the Manila Railroad Company. Then the President administered the oath of office to outgoing Justice Undersecretary Ceferino de los Santos as acting chairman, and Demetrio Santos and Augusto Espiritu as acting members of the Import Control Commission, all of them assuming office by designation.

Accompanied by Defense Secretary Magsaysay and members of his family, the President emplaned for Vigan on January 2 to administer the oath of office to Governor Eliseo Quirino. Board Members Maximino V. Ballo and Manuel Argel took their oath of office before Judge Zoilo Hilario of the Court of First Instance of Ilocos Sur. The President who was not originally scheduled to speak, delivered a short message in Ilocano at the close of the ceremonies in response to public clamor. He asked the people to cast aside partisan feelings generated by the last elections in order to maintain the prestige of the province which, he said, should set the example for other provinces to follow.

ON January 4, the President issued Executive Order No. 488, creating an interdepartmental committee to be known as the Philippine Maritime Committee composed of a representative from the Department of Commerce and Industry, Department of Foreign Affairs, Department of Finance, Department of Agriculture and Natural Resources, Department of Justice, Office of Economic Coordination, and the Central Bank, with the representative of the Department of Commerce and Industry as chairman. This committee, among its other functions, will serve as advisory body on maritime matters and allied activities.

WELCOMING personally the first big batch of tourists who called at Malacañan on January 5, the President told the visitors that he was sorry they missed seeing the Manila that was before the war. "I know, however, you did not come here merely for sightseeing. You come to see how we are waging our great struggles against the enemies of our democratic institutions—Communism," he added.

In the evening of that day, the President inspected the recently burned out area in Tondo, talking with the fire victims about their problems and immediate needs. The President ordered Captain Gil Natividad, precinct

commander, to go to Camp Murphy and get tents and cots from the Army for temporary use of fire victims.

SPEAKING extemporaneously as guest of honor at the formal inauguration of the Central Luzon Agricultural College in Muñoz, Nueva Ecija, on January 6, the President congratulated the officers of the college administration for having created in that locality "an atmosphere of earnest devotion in the realization of our concrete program of agriculture development." The President extolled the "unique phase" in the teaching method of the CLAC where students learn "how to become not only good farmers but also good economists, good administrators, and good and patriotic citizens." (*See* HISTORICAL PAPERS AND DOCUMENTS, *p. 21, for full text of the speech.*)

TWO high Australian dignataries, Army Minister Josiah Francis and Army Secretary Frank Sinclair, made a social call at Malacañan in the evening of January 7. The distinguished visitors told the President of the progress of the war in Korea.

ON January 8, the President gave a luncheon in Malacañan in honor of Francis Cardinal Spellman, to which high officials of the government and the Catholic church were invited. In an extemporaneous remarks made during the luncheon, the President said that Cardinal Spellman had come "to give us incentive and encouragement and to strengthen our spirit to continue fighting against what has been considered as the most serious threat against our civil liberties and our spiritual freedom — Communism." In reply to the President's remarks, Cardinal Spellman pointed out that "Communism is the enemy of the human race, the enemy of everything that Christian civilization for centuries has considered sacred . . . the enemy of the dignity of man." (*See* HISTORICAL PAPERS AND DOCUMENTS, *p. 28, for complete texts of the extemporaneous remarks.*)

Speaking before the press and radio at the Malacañan social hall in the evening of the same day, the President invited his hearers not to hesitate to come forward and tell him frankly what they thought of him, because that is the only way he could see himself as others see him, he pointed out. The President told them not to speculate on what he is doing. He invited them to come and ask him. (*See p. 24, for full text of the extemporaneous remarks.*)

THE President on January 9 conferred with PHILCUSA Chairman Jose Yulo and later with Economic Coordinator Salvador Araneta and the members of the board of directors of the LASEDECO to speed up the development of Mindanao and the settlement of public lands. The President took up with Mr. Yulo the immediate construction of highways in Mindanao with ECA funds and the completion of the development program to be financed with ECA help. He directed the board of directors of the LASEDECO to implement more vigorously the government program of land settlement. He said that with the coming of the ECA–PHILCUSA aid, the LASEDECO should be in a better position to make possible the settlement of 20,000 families in the LASEDECO reservation.

IN a conference on January 10 with Major General Albert Pierson, chief of the JUSMAG, the President made a formal bid for the utilization of part of the $10 million grant of the United States Government earmarked for specific military purposes, for the creation of six additional combat teams. Present at the conference were Minister Julian F. Harrington, Defense Secretary Magsaysay, and Ambassador Romulo.

Shortly after the conference, the President signed the appointment of Secretary Marciano Roque as Acting Executive Secretary to take the place vacated by former Secretary Teodoro Evangelista. The new appointee was immediately inducted into office. Other appointments made on that day were: Gil Mallari as ad interim Mayor of Baguio, former Quezon Governor Gregorio Santayana as Malacañan assistant, and Arsenio P. Luna as member of the Board of Examiners for Civil Engineers.

PRESIDENT Quirino in separate directives on January 11 ordered LASEDECO General Manager Felix D. Maramba and Social Welfare Administrator Asuncion A. Perez to leave immediately for the government's resettlement projects in Mindanao and arrange the settlement of the 21 families concentrated in the bunkhouse in Banga District. Manager Maramba was told to settle once for all on the spot all the complaints of the settlers, while Mrs. Perez was told to establish community life among the settlers, to build school and churches where the settlers could have centers of community life and assemblies. The President gave these separate directives in the course of two surprise visits he made that day to the offices of the LASEDECO and the Social Welfare Administration.

The Cabinet on the same day decided against the relaxation of the ban on exportation of scrap iron from the Philippines. The Export Control Committee was directed to disapprove all applications to export scrap metals outside the country. During the cabinet meeting the President reactivated the National Economic Council by signing the ad interim appointments of Finance Secretary Aurelio Montinola, as chairman, and Public Works Secretary Sotero Baluyut, RFC Chairman Placido Mapa, Labor Secretary Jose Figueras, MRR Co. Chairman Pio Pedrosa, Amado Bautista, Pablo Lorenzo, Jose Cojuangco, and Conrado Benitez, as members, in addition to Miguel Cuaderno, Cornelio Balmaceda, Salvador Araneta, and Vicente Carmona, who will continue their memberships in the Council.

In view of the absence of an appropriation in the law that provides for the creation of the Housing Commission, the President also decided to organize a temporary committee to evolve a plan to implement the law creating the Housing Commission and to coordinate the housing projects of the Government. The committee is composed of Jose Figueras, Salvador Araneta, and Pio Joven.

ON January 12, the President designated RFC Governor Pablo Lorenzo as his "eye and ear" in the field for the purpose of speeding up the implementation of the various development projects of the government. Lorenzo will also "follow up" important programs approved by the Cabinet in order to check on the progress of their execution. The President also inducted Counselor Lucas V. Madamba of the Department of Foreign Affairs as Assistant Executive Secretary vice Nicanor Roxas, who resigned to run for Congress in the last elections.

SPEAKING extemporaneously at the opening of the convention of provincial governors and city mayors at the Malacañan social hall on January 14, the President stressed the fact that he called that convention "in an effort to synchronize, systematize, and consolidate our joint efforts to discharge our respective duties as administrators of this government. . . . I want to repeat, I want to disabuse your minds in the belief that your administration is Nacionalista or Liberal. There is only one administration. . . . I want to impress in your minds we are one and indivisible," the President pointed out.

THE President issued on January 15, Proclamation No. 303 officially declaring the period from February 15 to March 14, 1952, as the time for the fifth annual fund campaign of the Philippine National Red Cross. The President also inducted on that day Joaquin Elizalde as Secretary of Foreign Affairs in the presence of members of the diplomatic corps, ministers of foreign countries, members of the Cabinet, and foreign affairs officials.

IN his 39th monthly radio chat on January 15, the President sounded the call for "the spirit of partnership between government and private initiative," pointing out that the government has taken steps to dispose of the enterprises heretofore financed by the government in favor of private entities or individuals ready and desirous to continue developing them. The President emphasized that "our new resolve is concentration, cooperation, and coordination." (*See* HISTORICAL PAPERS AND DOCUMENTS, *p. 32, for full text of the radio chat.*)

THE President on January 17 ordered the deportation of Peter Seigmund Baecher, an alien residing in San Quintin, Pangasinan, for having been involved in smuggling activities. The Constabulary was directed to arrest Baecher and deliver him to the Immigration Commissioner or his authorized representatives for immediate deportation to Germany.

Playing host to the provincial governors and city mayors who were invited to hold their closing conference at his Novaliches farm on January 17, the President enjoined them to forget the elections of 1953 so that everyone could concentrate his efforts in the harmonious, expeditions, and systematic problems that confront us, and have those efforts coordinated with those of the national government so that we can accomplish our task.

ON January 18, the President had a breakfast conference with Ambassador Carlos P. Romulo to give him instructions regarding his duties as Ambassador to Washington. Romulo was instructed to continue the work in the organization of the Pacific Pact. Later, the President received a delegation of some 200 BIR employees accompanied to Malacañan by Finance Secretary Aurelio Montinola and Revenue Collector Saturnino David. The President urged the revenue agents to intensify the collections of taxes and devise better means of effecting a systematic, prompt, and expeditious tax collection.

PRESIDENT Quirino before leaving aboard the presidential yatch *Apo* an inspection trip to the Visayas in the evening of January 18, appointed the members of the Board of Tax Appeals and signed five other appointments. Judge Mariano Nable was designated chairman of the Board and Judge Jose Querubin and Guillermo Gomez, members. Judges Nable and Querubin have been designated to their new positions in addition to their duties as district judges of Nueva Ecija and Capiz, respectively. Gomez' appointment is ad interim.

ON January 19, the President, who was on board the presidential yatch *Apo,* accepted the resignation of Economic Coordination Administrator Salvador Araneta and designated RFC Governor Pablo Lorenzo to take his place.

In a dispatch received from the *S.S. Apo* on the same day, the President authorized the new Economic Coordinator Pablo Lorenzo to make a trip to Mindanao on January 22 with two recently arrived ECA officials from Washington to acquaint ECA officials with the four important PHILCUSA projects; namely, road building, the LASEDECO, the Maria Cristina, and malaria control.

SOME 50,000 people packed Cebu's Plaza Independencia on January 20 "to give one of the city's most rousing welcomes ever given to the head of this nation," according to a dispatch received from Cebu on the same day. Descending the gangplank at 10 o'clock that morning amidst loud and riotous cheers, the President immediately went to Plaza Independencia where he addressed the mammoth crowd bearing placards with words such as: "Our Gratitude to the Apo for Restoring Democracy in Cebu," and "We Are for Your Reelection in 1953." The President told the mammoth crowd that his visit to Cebu and other towns in Eastern Visayas had no political significance and that he just wanted to see for himself what Cebu and other towns needed and what he could do for them in connection with his development program.

In the course of his visit to the Cebu Portland Cement Company at Naga, Cebu, in the afternoon, the President ordered the board of directors of the company to look immediately into the possibility of establishing at least one cement factory in Luzon, preferably in a place far from population centers to provide wherewithal of people in outlying areas and at the same time to draw unemployment from conjested Manila.

MALACAÑAN announced on January 21 the awarding of the Philippine Republic Presidential Unit Citation to the field artillery unit of the 20th BCT, for its "excellent performance of duty in Korea during the periods of November 5–6 and November 16–17, 1951. The award was

recommended by Defense Secretary Ramon Magsaysay and Major General Calixto Duque, AFP Chief of Staff.

THE Presidential party, docked at Catbalogan, Samar, the morning of January 21. In his speech before a crowd of 10,000 gathered in front of the provincial capitol, the President pledged to extend all possible assistance to Samar on condition that Samareños forget political affiliations awhile and work together for the good of the province. The President expressed confidence that with the backing of the United States, the external security of the country is assured. In the afternoon, the President had a conference with national, provincial, and municipal officials at the capitol. Later he attended a dinner given by the Governor in his residence and the reception tendered by the province at the high school building.

THE President arrived in Tacloban, Leyte, in the morning of January 22 and was warmly received by some 40,000 people. Addressing the mammoth crowd, the President urged Leyteños to explore the possibilities of setting up new industries in the province and to cooperate with the rest of the country in providing the much needed additional income for the national government.

The President was later whisked in a motorcade to the town and to Sto. Niño church for a *Te Deum*. From the church, the Presidential party proceeded to the provincial capitol for a conference with national, provincial, and municipal officials. In the afternoon, the President attended cocktails jointly given by the congressmen of Leyte and then addressed a youth rally at St. Paul's college auditorium. In the evening, the Presidential party attended the dinner given by the Governor and the reception and ball given by the province in the high school auditorium.

ACCORDING to a dispatch from the *S.S. Apo* received on January 23, the President directed Major General Duque, AFP Chief of Staff to start the immediate organization of 6,000-men combat teams to speed up the campaign against the Hukbalahaps. The President wants the campaign against dissidents finished this year so that the country can proceed smoothly in its development program. The President also instructed Maj. Gen. Duque to stop banditry which was found to be rampant in Leyte.

THE President arrived in Manila in the afternoon of January 24 after a six-day inspection of eastern Visayan provinces in which he had opportunity to see for himself the extent of the damages of the typhoons Amy and Wanda. As a result of his survey, the Chief Executive will recommend to Congress special appropriations for the rehabilitation of the provinces that suffered from the typhoons, especially those in the eastern Visayas.

Changes in the city government of Baguio were announced by President Quirino upon his return to Manila. Former Baguio Fiscal Patricio Perez was appointed Vice-Mayor of Baguio to succeed Mrs. Virginia Oteyza de Guia who was appointed to the UNESCO. Dr. Bienvenido R. Yandoc was appointed councilor to succeed Councilor de Castro, an appointive member of the city council.

ON January 25, the President administered the oath of office to Judge Mariano Nable and former Undersecretary Guillermo Gomez as chairman and member respectively of the Board of Tax Appeals. The Board will hold office at the Department of Justice building in Intramuros. It will function under the direct supervision of the justice department.

THE President on January 26, gave a ₱1,000-check as his contribution to the Community Chest. The President later inducted members of the reactivated National Economic Council in a ceremony held at the Palace ante-room. The President instructed the newly inducted officials to resume work immediately and coordinate their activities with the Philippine Council for U. S. aid to facilitate the execution of the government's economic development program. The President also swore in the board of directors of

the Home Financing Corporation, namely, Mayor Primitivo Lovina of Pasay City as chairman, and Vicente Fragante, Ramon del Rosario, and Conrado Benitez as members.

LIBERAL Party senators and representatives on January 27 pledged their full support and cooperation to President Quirino in carrying out the administration's program of action to ameliorate the living conditions of the masses and to bolster the economy of the country. The Liberal Party solons made this pledge during the caucus held in the Malacañan social hall before the lucheon given by the President in their honor that day. The President was roundly applauded when he said, "I want to be in perfect understanding, in perfect harmony, and in perfect helpfulness to you, and I wish you have the same feeling and spirit towards me." (*See p. 35, for full text of the speech.*)

THE President delivered his state of the nation message at the opening of the third regular session of the Second Congress of the Philippines on January 28, at the Capitol on Padre Burgos. In an hour-long message, the President reminded the Congress that the Philippines is still in its critical period and called upon the solons to show a "new heroism" demanded by the epoch. He impressed upon the legislators the need for unity, regardless of party, to give the people a life of substance, security, and contentment. (*See* HISTORICAL PAPERS AND DOCUMENTS, *p. 43, for full text of the message.*)

IN response to the greetings of Minister Tsushima, head of the Japanese reparations delegation who called at Malacañan on January 29, the President expressed the hopes that Japan would show sincerity in her desire to repair the damages she caused the Philippines during the war. The President also expressed the hope that there would be complete agreement in the negotiations not only for the benefit of Japan but more so for the Philippines which was the aggrieved nation.

MALACAÑAN announced on January 30 that President Quirino had designated the following to form the Presidential Committee on Reparations under the chairmanship of Foreign Secretary Joaquin Elizalde, to advise the Chief Executive in the formation of the policies that the Philippine Government should follow in connection with the question of reparations from Japan: Secretary Aurelio Montinola of Finance, Senator Eulogio Rodriguez, Sr., Senator Vicente Madrigal, Senator Emiliano Tria Tirona, Senator Manuel Briones, Secretary Cornelio Balmaceda of Commerce and Industry, Secretary Pablo Lorenzo of Public Works, Representative Diosdado Macapagal, Governor Miguel Cuaderno of the Central Bank, Ramon Fernandez, Ramon Roces, Vicente Sinco, Antonio de las Alas, Jose P. Marcelo, and Judge Guillermo Guevara.

THE President was host at a luncheon at Malacañan on January 30 to welcome Secretary of Foreign Affairs Joaquin M. Elizalde and to bid Godspeed to Ambassador Carlos P. Romulo. The affair was attended by members of the Cabinet, the diplomatic corps, and the Chief Justice of the Supreme Court.

THE President on January 31 vested the Philippine panel headed by Secretary of Foreign Affairs Joaquin Elizalde with full powers to negotiate and conclude agreement with representatives of the Japanese Government relative to the settlement by Japan of the Philippine reparations claims. The President also ordered more strict enforcement of the 8-hour labor law in the Philippines, in a directive to the Labor Management Board following reports of rampant violations of the law in Manila and other cities.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 488

CREATING THE PHILIPPINE MARITIME COMMITTEE AND DEFINING ITS POWERS AND FUNCTIONS.

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby create and constitute an interdepartmental committee, to be known as the Philippine Maritime Committee, composed of the following:

A representative of the Department of Commerce and Industry	Chairman
A representative of the Department of Foreign Affairs	Member
A representative of the Department of Finance	Member
A representative of the Department of Agriculture and Natural Resources	Member
A representative of the Department of Justice	Member
A representative of the Office of Economic Co-ordination	Member
A representative of the Central Bank of the Philippines	Member

The powers and functions of the Committee shall be:

(*a*) To serve as advisory body on maritime matters and allied activities;

(*b*) To study and recommend the necessary legislation for the creation of the Philippine Maritime Commission;

(*c*) To investigate and report on all understandings, conferences and other arrangements of and among ocean shipping lines trading in Philippine ports and/or carrying Philippine cargoes and to recommend appropriate steps for the effective enforcement of Philippine laws applicable thereto;

(*d*) To investigate any and all discriminatory or excessive rates, charges, classifications and practices prejudicial to Philippine interests and/or the interest of local importers, exporters and shippers of cargoes originating from, or destined for, the Philippines and to recommend appropriate measures by which such discriminatory or excessive rates, charges, classifications and practices may be corrected;

(*e*) To serve as liaison between the Government and any entity or organization that may be established by

shippers or any other private parties for the purpose of carrying on the business either as carriers or shippers of merchandise in the domestic and foreign commerce of the Philippines;

(*f*) To make surveys of the bottom requirements of the Philippine export trade and to make appropriate arrangements with shipping companies to cover any deficiency;

(*g*) To assist Philippine producers and/or shippers in making arrangements for the shipment of their products or export.

In order to enable it to carry out its functions, the Committee or any of its members and its duly authorized representatives or agents are hereby granted all the powers of an investigating committee within the purview of section seventy-one of the Revised Administrative Code. It is also authorized to call directly upon any Department, bureau or office in the executive branch of the Government or upon any government-owned or controlled entity or agency for such assistance as the Committee may need and subject to the approval of the President of the Philippines, to requisition for, utilize and make use of, the services of their personnel.

Done in the City of Manila, this 4th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 299

RESERVING FOR FOREST STATION SITE PURPOSES A PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE CITY OF DAVAO, ISLAND OF MINDANAO.

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for forest station site purposes under the administration of the Director of Forestry, subject to private rights, if any there be, a parcel of the public domain situated in

the City of Davao, Island of Mindanao, and more particularly described in the Bureau of Lands Plan BSD–10397, to wit:

> A parcel of land (lot 75–A of the subdivision plan Bsd–10397, being a portion of lot 75 of Davao Townsite, G.L.R.O. record unnumbered), situated in the City of Davao, Island of Mindanao. Bounded on the NE., by Magallanes Street; on the SE., by abandoned road; on the SW., by lot 76, Davao cadastre, and on the NW., by lot 75–B of the subdivision plan. Beginning at a point marked 1 on plan, being S. 9° 04′ E., 175.85 m. from Mon. 24, Davao Townsite, thence S. 37° 57′ W., 56.76 m. to point 2; thence N. 59° 15′ W., 44.57 m. to point 3; thence N. 32° 30′ E., 55.49 m. to point 4; thence S. 60° 14′ E., 50 m. to the point of beginning; containing an area of 2,641 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by P.L.S. cylindrical concrete monuments; bearings true; declination 2° 00′ E; date of the subdivision survey, May 18, 1950.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 21st day of December, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 301

MAKING PUBLIC THE CULTURAL TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SPANISH STATE.

WHEREAS, a Cultural Treaty between the Republic of the Philippines and the Spanish State was concluded and signed at Manila on the fourth day of March, nineteen hundred and forty-nine, by the respective Plenipotentiaries of the two Governments;

WHEREAS, the Senate of the Philippines, by its Resolution No. 93, adopted on May 17, 1949, concurred in the making of the aforesaid Cultural Treaty in accordance with the Constitution of the Philippines;

WHEREAS, it is stipulated in the said Treaty that it shall enter into force on the date of its signature as a "modus

vivendi" between the High Contracting Parties pending ratification thereof; and

WHEREAS, the said Treaty has been ratified on both parts, and the ratifications of the two Governments were exchanged at Manila on the fifth day of January, nineteen hundred and fifty-one;

NOW, THEREFORE, be it known that I, Elpidio Quirino, President of the Philippines, have caused the said Treaty, a certified copy of which is hereto attached, to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

CULTURAL TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SPANISH STATE

The peoples of the Philippines and of Spain, sharing together an affinity of culture, deem it the duty of their respective governments to preserve their common spiritual values and strengthen the bonds of brotherly friendship now existing between them by closely collaborating in the promotion of their culture.

By virtue thereof, both governments, have decided to convene a Cultural Treaty and, for this purpose, have agreed upon the following provisions:

ARTICLE I

The High Contracting Parties herein shall mutually support all initiatives that will insure the fullest cultural collaboration between them.

ARTICLE II

The High Contracting Parties shall stimulate the cultural exchange between their respective nationals in the field of science and arts, principally: (*a*) by providing for the exchange of Government publications and by assisting professional bodies in both countries to effectuate mutual exchange of literature in their respective lines;

(*b*) providing the greatest facility in the exchange of all kinds of books and publications of national authors; (*c*) by establishing, if possible, a regular program of radio broadcast in both countries for the public information of the other; and (*d*) by promoting a system of exchange of locally produced films.

ARTICLE III

The High Contracting Parties shall facilitate the exchange of professors, technical men, lecturers, authors, artists and students between them, and shall award mutually fellowships and aids, and adopt such other measures to accomplish the desired end.

ARTICLE IV

The High Contracting Parties shall adopt, on the basis of reciprocity, the necessary measures for the protection in their respective territories of the intellectual property of their nationals in so far as this is not covered by a general agreement of international character.

ARTICLE V

The High Contracting Parties shall stimulate tourism from one country to the other by every appropriate means, which shall be the subject of further agreements.

ARTICLE VI

The High Contracting Parties shall endeavour to resolve all monetary difficulties that may arise from the execution of the present Treaty.

ARTICLE VII

The corresponding Ministries of Foreign Affairs of the High Contracting Parties shall prepare the supplementary agreements necessary for the execution of the present Treaty. Such agreements shall be in each case the object of an exchange of Notes.

ARTICLE VIII

Pending ratification of the present Treaty by both Contracting Parties, it shall enter into force on the date of its signature as a "modus vivendi" between the two High Contracting Parties.

The present Treaty shall remain in force indefinitely until otherwise terminated by either of the High Contracting Parties, upon a prior notice of six months to the Other.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty and hereunto affixed their seals.

Done at Manila, Philippines, in duplicate, in Spanish and English languages, this 4th day of March, 1949.

For the Government of the Republic of the Philippines:

(Sgd.) ELPIDIO QUIRINO

For the Government of the Spanish State:

(Sgd.) TEODOMIRO DE AGUILAR Y SALAS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 302

MAKING PUBLIC THE TREATY ON ACADEMIC DEGREES AND THE EXERCISE OF PROFESSIONS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SPANISH STATE.

WHEREAS, a Treaty on Academic Degrees and the Exercise of Professions between the Republic of the Philippines and the Spanish State was concluded and signed at Manila on the fourth day of March, nineteen hundred and forty-nine, by the respective Plenipotentiaries of the two Governments;

WHEREAS, the Senate of the Philippines, by its Resolution No. 95, adopted on May 19, 1949, concurred in the making of the aforesaid Treaty on Academic Degrees and the Exercise of Professions in accordance with the Constitution of the Philippines;

WHEREAS, the said Treaty has been ratified on both parts, and the ratifications of the two Governments were exchanged at Manila on the fifth day of January, nineteen hundred and fifty-one; and

WHEREAS, it is stipulated in the said Treaty that it shall be in force from the day of the exchange of the instruments of ratification;

NOW, THEREFORE, be it known that I, Elpidio Quirino, President of the Philippines, have caused the said Treaty, a certified copy of which is hereto attached, to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

TREATY ON ACADEMIC DEGREES AND THE EXERCISE OF PROFESSIONS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SPANISH STATE

The Government of the Republic of the Philippines and the Government of the Spanish State, wishing to draw more closely the ties of friendship which bind the two countries, have resolved to conclude a Treaty on the Mutual Recognition of the Validity of Academic Degrees, the Mutual Acreditation of Courses of Study in their Curricula and the Reciprocal Treatment in the exercise of Professions, between the Philippines and Spain, and, for this purpose, have agreed upon the following provisions:

ARTICLE I

The nationals of both countries who shall have obtained degrees or diplomas to practice the liberal professions in either of the Contracting States, issued by competent national authorities, shall be deemed competent to exercise said professions in the territory of the Other, subject to the laws and regulations of the latter. When the degree or diploma of Bachelor, issued by competent national authorities allows its holder without requiring further evidence of proficiency to pursue normally higher courses of study, he shall also be deemed qualified to continue his studies in the territory of either Party in conformity with the applicable laws and regulations of the State which recognizes the validity of the title or diploma in question, and with the rules and regulations of the particular educational institution in which he intends to pursue his studies.

ARTICLE II

In order that the degree or diploma referred to in the preceding article shall produce the effects mentioned therein, it is hereby agreed:

1st.—That it be issued or confirmed and duly legalized by the competent authorities in conformity with the applicable laws and regulations of the other Party where it is to be recognized.

2nd.—That the one presenting it must prove by means of a certificate issued by the nearest Legation or Consulate of his own country that he is the same person to whom the academic degree or diploma has been issued.

ARTICLE III

The nationals of each of the two countries who shall have obtained recognition of the validity of their academic degrees by virtue of the stipulations of this Treaty, can practice their professions within the territory of the Other, by applying for the necessary authority to this effect from the Spanish Ministry of Labor or from the competent body or authority in the Philippines, as the case may be,

which authorities shall grant always the application, subject to the provisions of applicable laws and regulations governing alien labor and the practice of each profession, under a revocable permit, and the application shall be denied only in exceptional cases for justifiable cause that affects personally the petitioner. The persons thus authorized to practice their professions shall be subject to all the regulations, laws, taxes and fees imposed by the State upon its own nationals.

ARTICLE IV

It is understood, however, that the diploma or academic degree issued by the competent authorities of one of the two countries in favor of a national of either of the two High Contracting Parties, shall not entitle the holder thereof to practice or hold in the country other than his own, profession or position which are now, or may hereafter be, reserved by the constitution, law, or regulations, to its own nationals.

ARTICLE V

Without prejudice to both Governments transmitting to each other their respective curricula or having a reciprocal understanding with respect to whatever administrative details that might seem necessary, the studies of academic subjects completed by the nationals of either of the two countries in the territory of one of the two High Contracting Parties, may be accredited in the educational institutions of the Other, with the same academic weight or value as they have in the country where they were undertaken, by applying to the Minister or Secretary of Education, as the case may be, of the country where the interested party desires to be given credit. The applicant shall state his wishes and shall attach to his application his birth certificate, school certificates, and other supporting papers duly certified and authenticated, with which to show that he has completed his studies in educational institutions whose examinations or certificates of proficiency are officially valid, and that he is the same person to whom the said certificates and documents have been issued. The Minister or Secretary of Education, as the case may be, shall decide in each case, subject to the rules and regulations on the matter of the particular educational institution concerned, in which the applicant intends to pursue his studies, the equivalence in academic weight to be given to the studies completed by the applicant as compared to similar official studies or curricula of the country where said studies shall be given credit.

ARTICLE VI

The Present Treaty shall be in force for ten years from the day of the exchange of ratifications thereof, and if upon the expiration of the first ten years, neither of the High Contracting Parties shall have announced by official notification to the other, its intention to terminate said Treaty it shall remain in force for another ten years and so on until denounced.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate in Manila on 4th day of March, 1949.

For the Government of the Republic of the Philippines:

(Sgd.) ELPIDIO QUIRINO

For the Government of the Spanish State:

(Sgd.) TEODOMIRO DE AGUILAR Y SALAS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 303

DECLARING THE PERIOD FROM FEBRUARY 15 TO MARCH 14, 1952, AS THE TIME FOR THE FIFTH ANNUAL FUND CAMPAIGN OF THE PHILIPPINE NATIONAL RED CROSS.

WHEREAS, the Philippine National Red Cross is in need of funds to carry out its relief, welfare, health and character-building activities as well as its function of assisting the Republic of the Philippines in discharging the obligations set forth in the Geneva Red Cross Convention;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby declare the period from February 15 to March 14, 1952, as the time for the Fifth Annual Fund Campaign of the Philippine National Red Cross.

I call upon all citizens and residents of this country, regardless of nationality, color and creed, as well as upon all civic-spirited organizations to support this campaign and to give generously of their means, time and personal services in furtherance of the aims and purposes of the Philippine National Red Cross.

I authorize all national, provincial, city and municipal government officials and school authorities to accept, for the Philippine National Red Cross, fund-raising responsibilities and urge them to take active leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 304

AMENDING PROCLAMATION NO. 134, DATED JULY 19, 1949, AS AMENDED BY PROCLAMATION NO. 151, DATED OCTOBER 15, 1949, AND PROCLAMATION NO. 199, DATED AUGUST 4, 1950, BY PUBLISHING THE LATEST VALUES OF CERTAIN FOREIGN CURRENCIES FOR PURPOSES OF THE ASSESSMENT AND COLLECTION OF CUSTOMS DUTIES.

Pursuant to the authority vested in me by Republic Act No. 77 and upon the recommendation of the Secretary of Finance, I hereby amend Proclamation No. 134, dated July 19, 1949, as amended by Proclamation No. 151, dated October 15, 1949 and Proclamation No. 199, dated August 4, 1950, by publishing the latest values of certain foreign currencies for purposes of the assessment and collection of customs duties, as follows:

Country	Unit	Equivalent in U.S. currency	Equivalent in Philippine currency
1. Argentina	Pesos	$0.2000	₱0.4000
2. Austria	Schillings	.04653327	.09306654
3. Bolivia	Bolivianas	.0166	.0332
4. Canada	Dollar	.95	1.90
5. Ceylon	Rupees	.209424	.418848
6. Colombia	Pesos	.3984	.7968
7. Ecuador	Sucres	.0667	.1334
8. Germany	Deutsche Mark	.238379	.476758
9. Greece	Drachmas	.0001	.0002
10. Honduras	Lempiras	.49505	.99010
11. Hongkong	Dollar	.1905	.3810
12. Iceland	Kronur	.061275	.122550
13. Indonesia	Ruiah	.262467	.524934
14. Iraq	Dinar	2.80	5.60
15. Ireland	Pound	2.7988	5.5976
16. Israel	Pound	2.8011	5.6022
17. Luxembourg	Francs	.01984127	.03968254
18. Nicaragua	Cordobas	.141844	.283688
19. Panama	Balboas	.0172117	.0344234
20. Paraguay	Guaranies	.16667	.33334
21. Poland	Zloty	.0025	.0050
22. Thailand	Baht	.079681	.159362
23. Uruguay	Pesos	.526316	1.052632

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 177

EXONERATING COMMISSIONER OF CUSTOMS ALFREDO V. JACINTO

This is an administrative case against Commissioner of Customs Alfredo V. Jacinto brought by Pablo Ventura, Jr., a former customs secret service agent, for alleged (1) dereliction of duty in allowing and tolerating the unloading and landing from the *M/V Governor Smith,* then docked at one of the Manila harbors, of forty-one cases of cigarettes which were without the required internal revenue stamps and (2) gross favoritism, unwarranted discrimination and scandalous abuse of authority for laying off more qualified customs secret agents, including the complainant, judged by their efficiency, academic attainments and record of service, and retaining those who were less qualified.

The charges were investigated by the Integrity Board and its findings and recommendation on the matter have been submitted to me.

Regarding the first charge, the evidence shows that the cigarettes in question were merely returned from Iloilo to the factory in Malabon, Rizal, for reprocessing because they had become unfit for sale. As deduced by the Board, the stamps found missing in some of the cases must have been torn away or detached in the course of the continuous handling of said cases from the place of shipment to their final destination, considering that an internal revenue agent or representative is assigned in each and every cigar and cigarette factory to see to it that no box or case of cigars and cigarettes leaves the factory without the corresponding internal revenue strip stamps.

As to the other charge, it appears that complainant and others were laid off upon the recommendation of a

screening committee created by the respondent to select the employees to be retained and those to be laid off in view of the abolition of many positions in the Bureau of Customs by Executive Order No. 392, dated January 1, 1951; that in the particular case of the complainant, the respondent decided to dispense with his services because of certain incidents reflecting on his honesty and integrity, some of which reached the court and the city fiscal's office of Manila and were brought to his attention, thereby causing him to doubt complainant's usefulness and to lose that confidence in him which is absolutely necessary for his retention in the service as his position was confidential in character.

Moreover, complainant apparently did not need his government position, for although he was receiving only ₱135 a month as a customs secret service agent he was using a private car of his own in going to the office and in performing his duties, he being the recipient, according to him, of a monthly pension of ₱700 from his father, unlike his co-agents who had the same qualifications and efficiency but who were depending exclusively on their government salary. Under the circumstances, the respondent, in laying off the complainant, acted not only within the scope of his power and authority and in the exercise of his sound discretion but also in the best interests of the service.

After a careful examination of the record, I fully concur in the recommendation of the Integrity Board that, the charges not having been substantiated, the respondent be exonerated.

Wherefore, Commissioner of Customs Alfredo V. Jacinto is exonerated of the charges which are hereby dropped for lack of merit.

Done in the City of Manila, this 4th day of January, in the year of Our Lord, nineteen hundred and fifty-two, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Finance

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V–20

January 2, 1952

AMENDMENTS TO REVENUE REGULATIONS NO. V–1, OTHERWISE KNOWN AS THE BOOKKEEPING REGULATIONS, COVERING THE AUDIT AND EXAMINATION OF BOOKS OF ACCOUNTS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.

To all Internal Revenue Officers and others concerned:

In accordance with the provisions of Republic Act No. 658, amending section 334 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, the following amendments to Revenue Regulations No. V–1, or the Bookkeeping Regulations, are hereby promulgated for the information and guidance of all concerned and shall be known as Revenue Regulations No. V–20.

SECTION 1. Section 2 of the Revenue Regulations No. V–1, as last amended by Revenue Regulations No. V–13, is hereby further amended by adding a new paragraph to read as follows:

> "An 'independent certified public accountant' is one who is in fact independent. In other words, an accountant will not be considered independent with respect to any person in whose business the accountant has any financial interest, direct or indirect, or in which he is, or was during the period of report, connected as a promoter, underwriter, voting trustee, director, officer, or employee. A certified public accountant whose work is subject to the supervision and control of the taxpayer, or who is employed to keep the books of accounts or to supervise the keeping of the said accounts, cannot audit the latter's books of accounts. He must, therefore, be employed exclusively to audit the books of accounts of the taxpayer and not for any other purpose, nor bear to him any business or professional relationship which may in any way affect the independence of his professional actuations. A firm of certified public accountants, one of the members of which is actually keeping or supervising the keeping of the books of accounts of a certain taxpayer, cannot audit or examine the said books of accounts of the latter."

SEC. 2. The heading of Chapter II of Revenue Regulations No. V–1 and section 334 of the National Internal Revenue Code quoted in said Regulations should be corrected so as to read as follows:

> "CHAPTER II. *Books of Accounts and Audit by Independent Certified Public Accountants.*
>
> "All corporations, companies, partnerships, or persons required by law to pay internal revenue taxes shall keep a journal and a ledger, or their equivalents: *Provided, however*, that those whose gross quarterly sales, earnings, receipts, or output do not exceed five thousand pesos shall keep and use a simplified set of Bookkeeping Records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined anytime of the year: *And provided, further*, that in the case of corporations, companies, partnerships or persons whose gross quarterly sales, earnings, receipts or output exceed twenty five thousand pesos, shall have their Books of Accounts audited and examined yearly by Independent Certified Public Accountants and their income tax returns accompanied with certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding incomes therefrom and other relevant statements." (Section 334, National Internal Revenue Code, as amended by Republic Acts Nos. 438 and 658.)

SEC. 3. There is hereby inserted between sections 8 and 9 of Revenue Regulations No. V–1 a new section to be known as section 8–A, reading as follows:

> "SEC. 8–A. *Audit to be performed by independent certified public accountants.*—(1) Corporations, companies, partnerships or persons whose gross quarterly sales, earnings, receipts or output exceed twenty-five thousand pesos, shall have their books of accounts audited and examined yearly by independent certified public accountants. The audit to be performed by an independent certified public accountant shall embrace an examination of the accounting for assets, liabilities and capital together with a review of the income and expense accounts of the taxpayer, in accordance with generally accepted auditing standards and procedures.
>
> "(2) Accountant's Certificate. The accountant's certificate shall be dated, signed manually,

and shall identify without detailed enumeration the financial statements covered by the certificate and shall be submitted and filed with the taxpayer's income tax return. However, if the audit and examination has been performed by a firm of certified public accountants, the certificate shall indicate the firm name, signed either by the certified public accountant of the firm who actually performed the audit and examination or by the responsible officer thereof. The certificate shall include statements and/or answers on the following:

"(*a*) Kinds and amounts of taxes payable by the taxpayers during the year.

"(*b*) Degree of relationship by consanguinity or affinity of the accountant to the taxpayer, to its President, Manager or principal stockholder.

"(*c*) Have all such taxes due or assessed against the taxpayer been fully paid?

"(*d*) How much of such taxes or assessments still remains unpaid?

"(*e*) Has the audit been made in accordance with generally accepted auditing standards and procedures? If not, in accordance with what accounting standards and procedures was the audit made? What was the reason or reasons for the omission of any of the audit procedures of the non-compliance with accepted auditing standards?"

SEC. 4. *Date of effectivity.*—These regulations shall take effect on January 2, 1952.

AURELIO MONTINOLA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

REVENUE REGULATIONS NO. V–22

January 24, 1952

AMENDMENT TO SECTION 9 OF REVENUE REGULATIONS NO. V–7

To all Internal Revenue Officers and others concerned:

Pursuant to the provisions of section 338, in relation to section 4 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, the following regulations amending section 9 of Revenue Regulations No. V–7 are hereby promulgated and shall be known as Revenue Regulations No. V–22.

SECTION 1. Paragraphs two and three of section 9 of Revenue Regulations No. V–7 of the Department of Finance are hereby amended so as to read as follows:

"SEC. 9. *Stock-taking and allowance for waste of cigarette paper.* * * *

"Registered manufacturers of cigarettes may be credited with allowance for wastage of cigarette paper destroyed in the process of manufacture of cigarettes not to exceed eight per cent of the cigarette paper used in such manufacture. Any waste of cigarette paper in excess of eight per cent shall be presumed to have been used in the manufacture of cigarettes and the specific tax due on the cigarettes that may have been manufactured from such waste shall be assessed and collected in accordance with law. All waste cigarette paper should be preserved, and before the same is destroyed, the manufacturer of cigarettes shall make proper application therefor with the supervisor of tobacco factories or the provincial revenue agent, as the case may be, who shall authorize and witness such destruction. A certificate of destruction in triplicate shall be signed by the manufacturer and the internal revenue officer who witnessed the destruction. The credit for allowance shall only be entered in the register book after the accomplishment of the certificate of destruction, a copy of which shall constitute the supporting paper for such entry.

"It shall be the duty of the permittee or user to keep his stock of cigarette paper in his factory, warehouse, or place of business in an enclosure, room, or closet under special lock subject to inspection at all times by internal revenue officers. The cigarette paper shall be arranged separately and marked or tagged in accordance with their classification as to brand, color and length in such manner as to facilitate an accurate physical inventory thereof by internal revenue officers."

SEC. 2. *Date of effectivity.*—These regulations shall take effect on February 1, 1952.

AURELIO MONTINOLA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

Department of Justice

ADMINISTRATIVE ORDER NO. 1

January 2, 1952

AUTHORIZING JUDGE-AT-LARGE MANUEL M. MEJIA TO HOLD COURT IN PASAY CITY AND CALOOCAN, RIZAL.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Manuel M. Mejia, Judge-at-Large, is hereby authorized to hold court in Pasay City and Caloocan, Rizal, beginning January 2, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 2

January 9, 1952

SUSPENDING FROM OFFICE FRANCISCO SANCHEZ, JUSTICE OF THE PEACE OF CAPAZ, TARLAC, FOR ARBITRARY DETENTION.

In view of the fact that Mr. Francisco Sanchez, Justice of the Peace of Capas, Tarlac, is presently accused of arbitrary detention in criminal case No. 840 of the Court of First Instance of said province, he is hereby suspended from office effective upon receipt of notice hereof and until further advice from this Department.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 3

January 10, 1952

AUTHORIZING JUDGE-AT-LARGE TEODORO CAMACHO TO TRY ORDINARY CASES IN OZAMIZ CITY

In addition to the authority granted to Judge-at-Large Teodoro Camacho under Administrative Order No. 212 of this Department, dated December 27, 1951, he is also hereby authorized to try ordinary cases in Ozamiz City and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 5

January 17, 1952

DESIGNATING SPECIAL ATTORNEY BENJAMIN GOROSPE TO ASSIST THE PROVINCIAL FISCAL OF ABRA IN THE INVESTIGATION AND PROSECUTION OF A CRIMINAL CASE.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Benjamin Gorospe, Special Attorney, Department of Justice, is hereby designated to assist the Provincial Fiscal of Abra in the investigation and prosecution of the criminal case entitled "People *vs.* Felix Tuanquin et al.", for murder and frustrated murder, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 6

January 23, 1952

POSTPONING THE COURT SESSION IN CATANDUANES UPON REQUEST OF DISTRICT JUDGE JUAN R. LIWAG.

In the interest of the administration of justice and upon request of District Judge Juan R. Liwag, the regular court session in Catanduanes which by law should be held during the month of March, 1952, is hereby postponed to April, 1952, pursuant to section 54, last paragraph, of Republic Act 296.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER No. 7

January 23, 1952

DESIGNATING JUDGES OF FIRST INSTANCE TO REMAIN ON DUTY AS VACATION JUDGES DURING THE MONTHS OF APRIL AND MAY, 1952.

Pursuant to the provisions of sections 65 and 66 of the Judiciary Act of 1948 (Republic Act No. 296), the following judges are hereby designated to remain on duty as Vacation Judges during the months of April and May, 1952:

For the Province of Cagayan, District Judge Bernardino Quitoriano;

For the Province of Nueva Vizcaya and Sub-province of Ifugao, District Judge Jose R. de Venecia;

For the Province of Ilocos Norte, Judge-at-large Fidel Villanueva during April and Cadastral Judge Eladio Leaño during May;

For the Provinces of Ilocos Sur and Abra, Cadastral Judge Roman Ibañez;

For the Province of La Union, Cadastral Judge Jose P. Flores;

For the Provinces of Pangasinan and Zambales, District Judges Pedro Villamor (Lingayen) during May, and Segundo Martinez (Lingayen) during April, and for Iba, Zambales, during May; for Dagupan, District Judge Eulogio de Guzman during April and May; for Tayug, District Judge Rodolfo Baltazar during April, and Cadastral Judge Sulpicio V. Cea during May; and Cadastral Judge Jose Bonto for Iba, Zambales, during April;

For the Province of Nueva Ecija, Judge-at-large Manuel M. Mejia;

For the Province of Tarlac, District Judge Bernabe de Aquino;

For the Provinces of Pampanga and Bataan District Judges Edilberto Barot during April and Froilan Bayona during May;

For the Province of Bulacan, District Judges Bonifacio Ysip during April and May, and Roberto Gianzon, during April;

For the City of Manila, District Judge Conrado V. Sanchez, during April and May; District Judges Francisco Jose, Potenciano Pecson and Tiburcio Tancinco, during May; District Judges Rafael Amparo, during April, and Ramon San Jose, from April 16, 1952 to May 31, 1952; and Judges-at-large Demetrio B. Encarnacion and Alejandro Panlilio, during May; and Judge-at-large Felicisimo Ocampo, during April;

For the Province of Rizal, (Pasig and Pasay City), District Judge Bienvenido Tan and Judge-at-large Manuel P. Barcelona during May; (Pasay and District Judge Emilio Rilloraza during April;

and District Judge Hermogenes Caluag (Quezon City) during April;

For the Provinces of Cavite and Palawan, District Judges Antonio G. Lucero during April, and Jose Bernabe during May;

For the Province of Batangas, District Judge Juan P. Enriquez;

For the Provinces of Mindoro and Marinduque, District Judge Eusebio Ramos;

For the Provinces of Quezon and Camarines Norte, District Judges Vicente Santiago and Antonio Cañizares during April, and Gustavo Victoriano, during May;

For the Province of Camarines Sur, Judge-at-large Jose N. Leuterio during April and District Judge Perfecto Palacio during May;

For the Provinces of Albay and Catanduanes, Cadastral Judge Enrique Maglanoc, during April and May;

For the Province of Sorsogon, District Judge Anatolio Mañalac;

For the Provinces of Masbate and Romblon, District Judge Pascual Santos;

For the Province of Capiz, Cadastral Judge Maximo Abaño;

For the Provinces of Iloilo and Antique, District Judges Manuel Blanco and F. Imperial Reyes during April and May;

For the Province of Negros Occidental, District Judges Francisco Arellano and Eduardo D. Enriquez, during April and May;

For the Provinces of Negros Oriental and Siquijor, District Judge Gregorio S. Narvasa and Cadastral Judge Juan O. Reyes, during April and May;

For the Province of Samar, District Judges Jose Rodriguez during April and May, Fidel Fernandez during May, and Emilio Benitez, during April;

For the Province of Leyte, District Judges Segundo Moscoso (Tacloban) during April and May; Arsenio Solidum (Baybay) during April and May; and Maasin also during May; and Clementino V. Diez for Maasin during April;

For the Province of Cebu, District Judges Vicente Varela during April and Edmundo Piccio during May;

For the Province of Bohol, District Judge Hipolito Alo during April; and Cadastral Judge Segundo Apostol during May;

For the Provinces of Surigao and Agusan, District Judge Francisco Arca during May and Cadastral Judge Filomeno Ybanez during April;

For the Province of Lanao, District Judge Ramon Nolasco:

For the Province of Davao, District Judge Enrique Fernandez and Cadastral Judge Cirilo Maceren during April and May:

For the Province of Cotabato, Cadastral Judge Cirilo Maceren during April and May:

For the Provinces of Misamis Occidental and Zamboanga, Cadastral Judge Luis N. de Leon; and

For the Provinces of Sulu and Zamboanga City, Judge-at-large Teodoro Camacho.

In order to relieve the congestion of the dockets in the various courts, the above-named judges are hereby authorized to hold court in the province or provinces for which they have been respectively designated for the purpose of trying all kinds of cases and to enter judgments therein, giving preference to election cases and criminal cases with prisoners.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 7-A

January 23, 1952

DESIGNATING JUDGES OF FIRST INSTANCE TO REMAIN ON DUTY AS VACATION JUDGES DURING THE MONTHS OF APRIL AND MAY, 1952.

Pursuant to the provisions of sections 65 and 66 of the Judiciary Act of 1948 (Republic Act No. 296), and with the approval of the Supreme Court, the following judges are hereby designated to remain on duty as Vacation Judges during the months of April and May, 1952;

For the Province of Batanes, Judge Bernardino Quitoriano;

For the Province of Isabela, Judge Jose R. de Venecia;

For Mountain Province and City of Baguio, Judge Zoilo Hilario;

For Pasig, Rizal during April and Quezon City during May, Judge Nicasio Yatco;

For Caloocan, Rizal, Judge Juan R. Liwag;

For the Provinces of Oriental Misamis and Bukidnon, Judge Ramon Nolasco; and

For the Province of Cotabato, Judge Enrique Fernandez.

In order to relieve the congestion of the dockets in the various courts, the above-named judges are hereby authorized to hold court in the province or provinces for which they have been respectively designated for the purpose of trying all kinds of cases and to enter judgments therein, giving preference to election cases and criminal cases with prisoners.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 8

January 23, 1952

DESIGNATING CADASTRAL JUDGE ENRIQUE MAGLANOC TO ACT AS MEMBER OF THE THIRD GUERRILLA AMNESTY COMMISSION IN LIEU OF JUDGE NABLE.

Pursuant to the provisions of Administrative Order No. 11, His Excellency, the President of the Philippines, dated October 2, 1946, and in view of the appointment of Judge Mariano Nable as Chairman

of the Board of Tax Appeals, Member of the Third, Guerrilla Amnesty Commission, the Honorable Enrique Maglanoc, Cadastral Judge, is hereby designated to act as member of the said Commission in lieu of Judge Nable.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 9

January 25, 1952

DESIGNATING ATTY. MARIANO C. MORALES TO ASSIST THE CITY FISCAL OF MANILA IN THE INVESTIGATION AND PROSECUTION OF A CRIMINAL CASE.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Mariano C. Morales, Attorney on Detail in this Department, is hereby designated to assist the City Fiscal of Manila in the investigation and prosecution of criminal case No. 6970, entitled "People *vs.* Dominador Marquez, for treason, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 10

January 24, 1952

AUTHORIZING JUDGE PABLO VILLALOBOS TO HOLD COURT IN THE CITY OF BASILAN

In the interest of the administration of justice, pursuant to the provisions of section 56 of Republic Act No. 296, and upon request of Judge Pablo Villalobos of the Sixteenth Judicial District, Zamboanga City and Sulu, he is hereby authorized to hold court in the City of Basilan, during the month of February, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 11

January 26, 1952

AUTHORIZING CADASTRAL JUDGE FILOMENO YBAÑEZ TO HOLD COURT IN MISAMIS ORIENTAL

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Filomeno Ybañez, Cadastral Judge, is hereby authorized to hold court in the Province of Misamis Oriental, during the month of February, 1952, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

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ADMINISTRATIVE ORDER NO. 12

January 28, 1952

AUTHORIZING CADASTRAL JUDGE SEGUNDO APOSTOL TO HOLD COURT IN ILOCOS SUR

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Segundo Apostol, Cadastral Judge, is hereby authorized to hold court in the Province of Ilocos Sur, beginning February 4, 1952, for the purpose of trying all kinds of cases and to enter judgments therein, giving preference to cadastral cases.

OSCAR CATELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 13

January 29, 1952

AUTHORIZING JUDGE JOSE S. RODRIGUEZ TO HOLD COURT IN ALLEN, SAMAR, BEGINNING MARCH 4, 1952.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose S. Rodriguez, Judge of the Thirteenth Judicial District, Samar, Third Branch, is hereby authorized to hold court in the municipality of Allen, Province of Samar, beginning March 4, 1952, for the purpose of trying all kinds of cases arising in said municipality and the municipalities of Capul, San Antonio, Lavezares and San Jose, same province, and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 14

January 30, 1952

AUTHORIZING CADASTRAL JUDGE MAXIMO ABAÑO TO TRY OTHER CASES IN ADDITION TO AUTHORITY GRANTED UNDER DEPARTMENT ADMINISTRATIVE ORDER NO. 214.

In addition to the authority granted to Cadastral Judge Maximo Abaño under Administrative Order No. 214 of this Department, dated December 27, 1951, he is also hereby authorized to try other kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 15

January 29, 1952

DIRECTING FISCAL DIOSDADO BACOLOD OF MISAMIS OCCIDENTAL TO OZAMIZ CITY TO DISCHARGE THE DUTIES OF CITY ATTORNEY THEREIN.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised

Administrative Code, Mr. Diosdado Bacolod, Provincial Fiscal of Misamis Occidental, is hereby directed to proceed to Ozamiz City, there to discharge the duties of city attorney, in addition to his regular duties, without additional compensation, effective immediately and to continue during the absence on sick leave of the regular incumbent thereof.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 16

February 4, 1952

AUTHORIZING CADASTRAL JUDGE LUIS N. DE LEON TO HOLD COURT IN KALIBO, CAPIZ, EFFECTIVE IMMEDIATELY.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Luis N. de Leon, Cadastral Judge, is hereby authorized to hold court in the municipality of Kalibo, Province of Capiz, effective immediately, for the purpose of trying all kinds of cases and to enter judgments therein.

OSCAR CASTELO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 17

February 4, 1952

TEMPORARILY DESIGNATING SOLICITOR MELITON G. SOLIMAN TO ASSIST THE CITY FISCAL OF CEBU CITY IN CONNECTION WITH AN INJUNCTION CASE.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Meliton G. Soliman, Solicitor in the office of the Solicitor General, is hereby temporarily designated to assist the City Fiscal of Cebu City in the discharge of the latter's duties in connection with the injunction case filed by one Morelos against the present acting mayor and the chief of police of said city, effective immediately and to continue until further orders.

OSCAR CASTELO
Secretary of Justice

Department of Commerce and Industry

COMMERCE ADMINISTRATIVE ORDER NO. 6-1

October 30, 1951

TO AMEND CERTAIN RULES OF COMMERCE ADMINISTRATIVE ORDER NO. 6, PROVIDING FOR SUB-STANDARD GRADES FOR PALASAN POLES AND OTHER PURPOSES.

Pursuant to the provisions of section 79(B) of the Revised Administrative Code and sections 155 and 156 of Executive Order No. 94, and on recommendation of the Director of Commerce, the following amendments to Commerce Administrative Order No. 6, on standardization and inspection of unsplit rattan are hereby promulgated, subject to the approval of the President of the Philippines, for the information and guidance of all concerned:

1. Each of the six grades of Palasan described in Rule 3 of Commerce Administrative Order No. 6 is hereby provided with a corresponding sub-standard grade based on the requirements common to all classes or trade names of unsplit rattan specified in Rule 1 of the same Order, without prejudice to seller-buyer agreement or understanding regarding tolerance and/or allowance for failure of the palasan poles projected for shipment to strictly fulfill such requirements. Such sub-standards shall be designated by the grade to which the Palasan belongs, followed by the word "Sub-Standard."

2. An inspection fee for sub-standards of Palasan shall be charged and collected at the rate of ₱2 per 1,000 pieces or fraction thereof for the domestic trade; and ₱4 per 1,000 pieces or fraction thereof for the export trade.

3. In case of rush inspection which does not come under the purview of the provisions of Rule 6, the certificate of inspection fee of ₱2 provided for in Rule 14, shall be increased to ₱4, not including the cost of one thirty-centavo documentary stamp to be affixed to the certificate.

Export Inspectors who shall be required to render service outside of regular working hours, shall be entitled to an overtime pay of ₱1 per hour, payable by the exporter/shipper or interested party. Request for overtime service may be filed by the exporter/shipper or interested party with the Director of Commerce who may authorize the payment for such service to the export inspector concerned by means of a voucher properly prepared for the purpose.

4. No reimbursement of fee/fees already collected shall be made on failure to ship or sell any of the inspected unsplit rattan; *Provided, however,* that in case the failure to ship or sell is reported to the Director of Commerce before the expiration of the date of departure of the loading vessel, the inspection fee/fees paid therefor may be applied to the payment of inspection fee/fees for a future shipment of the same party.

Provided, further, that in case the failure to ship or sell is reported within 15 days after the fate of departure, half of the inspection fee/fees paid may be applied to the payment of inspection fee/fees for a future shipment of the same party, the other half to be forfeited to the government, and, if the report of the failure to ship is made after 15 days after the date of departure, the whole amount of fees paid shall be forfeited to the government.

Provided, finally, that in case the failure to ship was due to force majeure or causes beyond the control of the shipper/exporter or interested party, and such failure to ship has been reported within a reasonable length of time after the occurence of the event, the inspection fee/fees paid or part thereof may be made available for inspection fee/fees or part thereof for future shipments of the same party, in accordance with the discretion of the Director of Commerce after an investigation of the case and the cause of the failure to ship has been proven to be true and beyond reasonable doubt. If the result of the investigation is favorable to the exporter/shipper or interested party, any amount spent by the export inspector in excess of his actual and necessary expenses in inspecting the shipment may be applied to payment of inspection fee/fees for future shipments of the same party.

When the shipment is the very same lot already inspected and certified, reinspection shall be required and a new certificate shall be issued therefor. New lots to take the place of any lot already certified but not shipped shall of course be inspected and certified.

5. All rules and regulations in Commerce Administrative Order No. 6, or any portion thereof, inconsistent with the provisons of this Order, are hereby revoked.

6. This Commerce Administrative Order shall take effect upon its approval.

Done in the City of Manila, this 30th day of October, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

CORNELIO BALMACEDA
Secretary of Commerce and Industry

Recommended: September 8, 1951

By: BONIFACIO A. QUIAOIT
Director of Commerce

Approved: December 20, 1951

By authority of the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

November 1951

Mr. Teofilo Saavedra as Member of the City Council of the City of Basilan, November 6.

Mr. Augusto F. Espiritu as Member of the Board of Accountancy, November 14.

January 1952

Lucas V. Madamba as ad interim Assistant Executive Secretary, January 8.

Benito Ong as ad interim Mayor of City of Iligan, January 18.

District Judge Mariano Nable of Nueva Ecija as Chairman of the Board of Tax Appeals, January 18.

District Judge Jose Querubin of Capiz as Member of the Board of Tax Appeals, January 18.

Guillermo Gomez as ad interim Member of the Board of Tax Appeals, January 18.

Panfilo Tabudlong as ad interim Justice of the Peace of Merida and Isabel, Leyte, January 18.

Cesar Gonzales as ad interim Justice of the Peace of Kananga, Leyte, January 18.

Antonio Rubio as ad interim Justice of the Peace of Hindang, Leyte, January 18.

Dr. Deogracias V. Villadolid as ad interim Member of the Institute of Nutrition, January 25.

Dr. Isabelo Concepcion as ad interim Member of the Institute of Nutrition, January 25.

The Director of Public Schools as ad interim Member of the Institute of Nutrition, January 25.

The President, Philippine Home Economics Association as ad interim Member of the Institute of Nutrition, January 25.

Vicente G. Tizon as acting Member of the Board of Assessment Appeals of the Province of Samar, January 28.

Conrado Benitez as Member of the Labor-Management Advisory Board, January 29.

HISTORICAL PAPERS AND DOCUMENTS

EXTEMPORANEOUS REMARKS OF PRESIDENT ELPIDIO QUIRINO AT THE INAUGURATION OF THE CENTRAL LUZON AGRICULTURAL COLLEGE, MUÑOZ, NUEVA ECIJA, JANUARY 6, 1952.

President Matela, Members of the Board of Trustees, Members of the Faculty of this Institution, Fellow Guests and Friends:

Rather than send a well and carefully worded message to be read on this occasion, I preferred to come so that with my presence here I would enjoy not only the happiness of being a witness to the transformation of this institution from school to college, but also the privilege of impressing upon the people my personal interest in and determination to follow up the progress of this College. At the same time, I want you to know the high objective which inspired me on December 31, 1950, to convert this institution into a college by executive order.

This is not the only step that I took in the first few months of my incumbency in order to show the need of revising our school system with a view to giving more emphasis to vocational education. We have revived and revitalized many of our agricultural schools in different regions. We have converted into regional schools many of the trade schools in the Philippines in order to make it easy for the national government to concentrate its attention on their development for the good of the country at large. We have converted the normal school into a full-fledged college and, in the preparation of our huge program of economic development and agricultural expansion, we are setting aside big sums of money with which to provide our agricultural institutions not only with equipment and the supplies that they need, but also with technical men so that we could develop faster and more efficiently the agricultural possibilities of our country.

This school, which has been in existence for almost 50 years, has grown from a mere intermediate agricultural school to a college. Its growth represents a consistent and persistent endeavor. I have been quite a close observer of its development and expansion. This is not the first time that I visited this institution. I am not a stranger to this hall. My interest in this school has grown with the years and when I found time to give due recognition to those who have organized and built it, I did so with pleasure and on my exclusive responsibility.

There is one unique phase in the teaching method of this College which no other school in the Philippines or abroad can boast of. Those who enroll here learn how to become

not only good farmers but also good economists, good administrators, and good and patriotic citizens. They have their own government. They follow the rules of their own college administration which forms as good a basis for their future success as citizens.

Increasing production, whether agricultural or industrial, does not mean anything to us unless the effort exerted is coördinated with our greater effort to build a substantial, stable, and united country. We have agricultural schools scattered everywhere. We have farm settlements established in strategic places. We have a program of general agricultural development which is quite ambitious. But in spite of all these objectives, we shall fail if we do not train our citizenry to produce more, to be better hands in farms and factories, and to assume greater responsibility in coördinating their individual constructive efforts with the efforts of the rest of us who are struggling to make our country a strong, enduring, and happy nation.

This is the great difference between this agricultural College and other schools in the country. It is this type of College that should be established regionally to serve as centers in each region in creating constructive communities. It is this type of College that contributes to the basic development of our country, bring economic security to our people, and insure to them a life of substance and happiness conducive to the enhancement of our national prestige.

Farming is still the most democratizing activity in our life. It is farming that compels you to bend and bow and stoop to produce. It is not the brain-searching activity that scholars usually develop. It is something that induces us to look down underneath our feet and encourages us to till the rich, fertile soil that God has given us.

Heretofore, we have been known as an agricultural country. But we are exerting every effort to show that we can also industrialize the country. For that purpose, we are establishing basic industries for the furtherance of industrial activities like those mentioned by Congressman Cases—the Ambuklao project in the Mountain Province designed to supply the territory north with electric current and provide the citizenry not only with light but also with power for new cottage industries which will gradually develop into big ones more responsive to the needs of the country. Thus, we shall avoid importing so many articles that are now eating up our dollars. There are other huge and important projects like the Maria Cristina which, perhaps, will be the biggest hydroelectric plant in the Orient and the fertilizer plant being established to produce the necessary element to enrich the soil especially in the north and central Luzon, which is now poor. The fertilizer so produced will be distributed throughout the country in order to enable the soil to increase its yield.

In our agricultural pursuit, let us try to discover new products. In our experiments, let us develop not only already existing plants and trees but also new plants or new varieties and increase our produce. For this, we need special training.

Heretofore, our agricultural students have been given limited facilities by our schools and institutions because of our limited economic resources. But with the assistance from the United States and also the greater activity among our financiers who now seem to be giving more incentive to agricultural and industrial production, I am sure that provisions can be made for our public and private schools to engage in agricultural experiments on a scientific basis. This is what we immediately need.

Our territory is rich, our potentialities are unlimited; we have all sorts of mines and minerals under our soil; the climate is excellent; our forests are full of trees; and there is an unlimited number of men at present eager and determined to explore and exploit these potentialities. But we still lack the technical knowledge to take advantage of all of our potentialities. It is therefore necessary that institutions such as this be helped and encouraged so that they can produce the necessary technical men, the brain, the brawn, and the know-how which we need to convert all our country's potentialities into unlimited sources of wealth.

We may not be able to achieve all this in one generation but we have made a good start. This government has devised a plan which is quite ambitious. We have called it the economic mobilization program. We have been trying to carry it out with our limited means with the assistance of our friends across the seas. However, the effort is consistent, clear, and determined. We have a program of economic national action. We are not groping in the dark. If there is one thing our country can be proud of it is the fact that we have found our way to economic development and industrial expansion. In carrying out this ambitious program, we need the concentrated attention, patriotic devotion, and unselfish interest of those who are called upon to coöperate in the achievement of our great national objectives for the happiness and security of our people.

My friends, I came not merely to witness this memorable event or to see for myself in what other way the national government can extend assistance to this College. I came also to find out in what manner the government could expand the activities of this College to other regions so that we shall have in each strategic region, institutions or agricultural colleges such as this that can develop agricultural leaders from among our youth to carry out our national policy.

I congratulate the present officers of the College administration for having created here an atmosphere of coöpera-

tion, an atmosphere of earnest devotion in the realization of our concrete program of agricultural development. And, on this occasion, I cannot forget the founders of this institution who continuously, consistently, and persistently have endeavored to make this College grow to its present status. Let us have more of this spirit of coöperation among our citizens.

We don't have to concentrate our attention in Central Luzon alone. There are other lands available, perhaps more advantageously situated than Muñoz College, especially in the heart of Mindanao, Samar, Palawan, Cagayan Valley, or Mindoro. Let us cast our eyes further and broaden our horizon, and see if we can find other suitable locations for agricultural colleges similar to the Central Luzon Agricultural College. There is an imperative need for training men as agricultural leaders to develop this country. I hope that 20 years hence we shall look back upon this day with pride for having been able to identify ourselves with the promotion of the agricultural progress of our country and for having helped build a college that will endure and give honor to the name and prestige of our republic. Thank you very much.

EXTEMPORANEOUS REMARKS OF PRESIDENT QUIRINO BEFORE THE PRESS AND RADIO AT MALACAÑAN PARK SOCIAL HALL, JANUARY 8, 1952.

My dear friends:

I am glad that Mr. Nazareno has reminded you of two instances which perhaps formed the basis of my aspiration to climb higher, to reach what I have reached—the presidency of the Philippines. That *palo cebo* story you still remember. The Zuider Zee story, I think, is worth repeating because it shows how the law of economics operates all over the world.

The Zuider Zee is an inland sea in Holland. It covered a territory of about 30 to 40 thousand square miles, but it was shallow. The Dutch, with their very limited territory, adopted a program of reclaiming that portion of the sea which crossed like an arm over the whole territory of Holland. After years of reclamation work, they were able to convert into farm lands 20 square miles of the Zuider Zee.

Holland needed wheat very badly. So it converted the new land into a wheat farm, but because Holland's population is small and the production of wheat became abundant, the Dutch decided to export their Zuider Zee wheat to Denmark.

Denmark has been noted for hog canning, hog and pork production. In order to produce more hogs or to encourage the canning industry, she needed more and more wheat.

Her importation of wheat from Holland so increased and her hog industry became so prosperous that she had more hogs than she could profitably can. So Denmark decided to convert her excess hogs into fertilizers. With plenty of fertilizers to be exported, Denmark found a ready market in Holland. To Holland she exported her fertilizer and Holland used it for the Zuider Zee portion where she produced wheat. Thus a sort of economic cycle was completed. Holland through her Zuider Zee produced for Denmark more wheat with which to increase her production of hogs and Denmark converted her excess of hogs into fertilizer and shipped it to Denmark to enable her to increase in turn her wheat harvest in the Zuider Zee plantation.

The Philippines could emulate such example so that what we produce in one region could be utilized in another region and vice versa. . . .

There were many patriots in this country who thought that we were the exclusive authors of the independence law which we obtained in 1934. That is not correct. All those who worked for the approval of the Tydings-McDuffie Law were not the sole architects of Philippine freedom. That freedom was achieved because of the efforts exerted since if not before the days of Rizal, the days of Bonifacio, the days of Aguinaldo, and the days of Quezon and Osmeña. Rizal was the first to climb our *palo cebo,* followed by Mabini and the rest of us. They could not reach the top of the greasy pole. Nevertheless they were able to remove plenty of the grease. They came down because their time was up. However, they were quickly followed by Aguinaldo and the other revolutionary leaders who, too, tried to reach the top. It was easy for them to reach the place where Rizal and Mabini had stopped. They climbed higher and removed more grease, so the rest of us who climbed later were able to reach the top, but always using the same ash to clean the pole as we climbed higher and higher in our patriotic efforts.

All of us have thus climbed the pole of independence one by one until we reached the top. We who belong to this generation are the lucky ones because we succeeded in getting the coin—our independence which was placed on top of the *palo cebo.* Independence was not therefore achieved by one or two generations alone. It is the achievement of all the Filipino people in their continued struggle for freedom and liberty, from the beginning to the present time.

That was my analysis before. It still is my analysis now.

Now, let us come to our time. We are struggling hard today to establish a regime of plenty, a regime of substance, a regime of stability, a regime of peace and security, a regime of complete happiness and prosperity for our coun-

try. Each of us has his own views as to what he should do in order to attain his objective. Each of us has his own scheme, his own way of approach.

The trouble with us is that when one is on top and is doing things, those who are below and are merely observing, believe that they are better than he. We become very critical of him and express our criticism and our condemnation loudly and often disrespectfully. We should overcome that attitude. We don't seem to realize what harm we are doing to those already in harness. We keep accusing them of not doing the proper thing. If and when such detractors reach the same place, perhaps they will realize that we were better prepared than they to do things and actually did better. That unfortunately is our political history, a history which repeats itself oftener than we realize.

When one party is in power, the other party strives to pull it down in order to have a chance to be on top. When that party is on top, the other party which has fallen will exert the same effort to pull the other down in order to replace or supplant it. So we continue with the *palo cebo*. But by our continuous struggle to achieve ascendancy we have greatly delayed our progress. We go to the extent of advertising our country in a bad light by making derogatory propaganda abroad. That certainly is not in keeping with our growing reputation and the name we have gained in our international relations and in our internal activities. We should all endeavor to make our country stable, strong, and peaceful.

My friends, it is good that we get together in an intimate manner because we have to size up and feel the touch of all those who are already in harness to accomplish those things which constitute our high national objectives.

Those who are in power are not men of marble. They are not men with idle brains. They are not men full of angelic ideas. We are not in heaven. We are not perfect. Come and see us, talk with us, and compare us with those similarly situated. If we are not handsome, consider that others are not Apollos either. If we talk slowly, others perhaps limp. If we drink a little, perhaps others drink a lot more. If occasionally we go astray and seem to be sinning socially, perhaps there are others most vocally critical of us, who are worse.

And it is only in the knowledge of the comparative qualities or virtues of each that you can draw your own conclusions. Don't regard those in the government, those elected by the people, as perfect creatures with perfect ideas. They are as human as the rest of us with possibly all the ills that the flesh is heir to.

See us, measure us, examine us, and compare us with the rest of the people and you will have a better understanding and better perspective. Talking of morality, public

and private, my friends, I am living in a fishbowl. I can be seen anytime anywhere, and without any obstruction. I have nothing to hide. If there is anything wrong with me, I am not ashamed of it. I am not the author of myself. It is God, my father, my mother. But please compare me with the rest. What do others think of themselves? What do they do? What have they accomplished? Are they perfect? Are they endowed with perfect minds—or are they beyond reproach?

It is only by being closer to the people that one can get a right estimate as to whether in their opinion one is worthy of trust, emulation, and admiration. I welcome this opportunity to be with you because gatherings like this enable you to know me more intimately. And once you have acquired that intimate or personal knowledge, be always truthful and fair.

We are accessible. Anybody can attack us; anybody can love us if he has any room for such feeling. Nobody will feel hurt if you criticize an official because of his act, but avoid blaming or criticizing the whole institution, the whole government, or the whole party for that. If So and So is a crook, a racketeer, a criminal, tell him what he is and name him. Tell us who he is but don't condemn the whole Liberal or the entire Nacionalista party. The blame is personal or individual, not collective. We are not sanctioning anything wrong or immoral or anything that will reflect on our country. None of us in the government is willing to accept that responsibility, but if there is anybody among us who is trying to pull down the name and prestige of the country, nail him down, and I am going to help you not only to nail him down but also to liquidate him, if necessary, because he has no business dragging down the prestige of the country. (*Applause.*)

I make this special reference to the kind of life that we live in this country because it is necessary to have a proper yardstick, to have a practical basis of comparison so as not to set apart one class of people for eulogy or for condemnation. It is necessary to have this understanding because we do not want to distract our population now that we are engaged in promoting our national development, national stability, and internal and external security. It is not right that we should waste so much of our time, so much of the space in our newspapers and magazines, and so much of the time allotted to the radio, on silly things or on things that do not at all contribute to the realization of our national objectives.

Of course, it is very hard to be serious all the time. We must inject a little bit of humor, of the common touch, even when commenting on important issues. We do not want to appear solemn, dry, and monotonous every time we discuss our important problems. It is good to be light

occasionally, but let us not overdo it. Let us not destroy systematically those things that give us prestige and honor as a nation and as a people and promote the highest objectives of our country.

I think the newspapermen are imbued with this idea. I do not have to remind them of their duties and responsibilities. But it is good for us to remind everybody who has this joint responsibility. Those who have a program to carry out become distracted if they are always faced with petty criticisms, if somebody always pokes them in the ribs. Such acts should not be encouraged. I don't want to discourage the radio, nor the newspapers or anybody's enterprise; but in the same way that I do not want to discourage them, they must not discourage either, much less make the butt of ridicule, those who have the great responsibility of nation building.

I want to tell you in all earnestness that I am devoting all my time to the promotion of our program, the national policy of our government. I have not even had time for relaxation because my only aspiration now is to accomplish my task within the period or span of my administration. I want you to know that we are in a hurry to establish a regime of stability, a regime of unity, and a regime of prosperity. We should devote our efforts to the attainment of that goal.

There are many things that may distract us on the way and compel us to stop once in a while. But let us not tarry for long. Let us move forward to the consecration of those ideals which we all have pledged to realize. (*Applause.*)

My friends, if you believe I have this or that defect, come and tell it to me. Don't speculate on what I am doing. Come and ask me. Do not hesitate to come forward and tell me frankly what you think of me, because that is the only way I can see myself as others see me. Thank you very much. (*Applause.*)

THE PRESIDENT'S EXTEMPORANEOUS REMARKS AT THE LUNCHEON GIVEN IN MALACAÑAN IN HONOR OF FRANCIS CARDINAL SPELLMAN, JANUARY 8, 1952.

Your Eminence, Your Excellency, and Friends:

I invited you to join me at luncheon this noon to honor one of the greatest friends of the Philippines in America and for that matter outside the Philippines. We have had great friends in the past—people who have aided us in our political aspirations, who have greatly helped us in our economic development, and who are still assisting us in our military needs in order to insure our internal and external security. But the most recent and most effective assistance we have received has come from our friend Cardinal Spell-

man who is our guest today. He is giving us the spiritual assistance that we need at this very moment.

Cardinal Spellman has made friends all over the world, not by staying near the St. Patrick's Cathedral in New York, but by going out, especially in the field of battle; mixing with the wounded, the sick, the disabled, and the heroes of the last world war and of the present war in Korea. He has traveled all over the world twice. Wherever he goes he makes friends. The friendship that he gains is born in the open battlefields where men of different colors and creeds fight. Thus, his friendship is based on something fundamental. It is based not only on religion but on human love, on brotherhood. And because he is known everywhere and is a friend of everybody, he has been instrumental in uniting peoples of different creeds in the battlefields and in other places he has visited. We who are his friends should also consider ourselves the friends of his friends and thus prove to him that we are friends of the world. (*Applause.*)

We have fought hard, especially during recent years, for our freedom, not only for human liberty but also for religious freedom. We have employed all means—man power, economic power, fire power, and what we may call prayer power. Fortunately, we belong to a class which has always been identified with the world crusade for peace initiated by the Holy Father and his associates. Cardinal Spellman, so close a friend, so dear to the Holy Father, is identified with all the measures taken by the Vatican in implementing the policy of indoctrinating the peoples of the world with the necessity of maintaining peace through love of humanity. He is implementing what the Holy Father is doing at the Vatican.

So we are proud to have him with us today because he has come to see his constituency in the Philippines, which he has visited for the third time. We hope that he will continue to visit us and water the beautiful plant that he has planted in our midst—the love of humanity and the brotherhood of men. I am quite sure that young and strong as he still is, he will pay us more visits. And when he returns to the Philippines, I hope he will be able to say that he has encouraged the people not only in Korea and the Philippines, but all the peoples of the world who are now engaged in the struggle for human existence.

We who believe in the life hereafter are interested in personal liberty. We are also interested in our religious freedom, which today is one of our greatest assets and weapons against Communism. Cardinal Spellman has come to give us incentive and encouragement and to strengthen our spirit to continue fighting against what has been considered as the most serious threat against our civil liberties and our spiritual freedom—Communism.

With his help, with his prayers, and with his intercession with the Holy Father, I hope we shall be able to develop our country and make it stronger economically, militarily and spiritually. We welcome Your Eminence and hope you will come back again a closer, stronger friend of the Philippines.

* * *

THE CARDINAL'S REPLY

Mr. President, Mr. Vice President, Mr. Chief Justice, Members of the Cabinet, other Officials of the Philippines, Representative of the Holy Father, Vagnozzi, Your Grace, and my Brother Bishops, and Persons and Representatives of my Country, Minister Harrington, General Pierson, Admiral Cruzen, and Colonel Reeves, and my dear Friends:

I cannot tell President Quirino how grateful I am for his words of welcome, but I feel he knows already that my heart speaks in full gratitude to him for his personal friendship manifested to me down through the years brought on the occasion of my visits to the Philippines and also when he honored me and the Church of New York with his visit to the Cathedral of St. Patrick and his visit to my home.

I came to the Far East for the third time in my life, especially to pay my tribute of admiration and affection to the boys of my country who are serving my country's cause and who believe in the interest of humanity in Korea. I visited troops of the United Nations and through the kindness, courtesy, and personal accompaniment at all times during those nine days, of General Van Fleet, Commander of the Eighth Army, I was able to visit every division in the frontlines in Korea. I was unable to say a mass for every battalion but the Corps commanders and the Division commanders, the Regimental commanders and all those troops that could be spared from the frontlines came to attend at least one of the services I conducted during those memorable days in that war-devastated land.

I can testify here, and gladly, to the valor of all the troops of the United Nations as together they fought against the common enemy, which President Quirino has justly characterized as Communism. For Communism is the enemy of the human race, the enemy of everything that Christian civilization for centuries has considered sacred. Communism is the enemy of the dignity of man. Communism is that octopus that would enslave mankind. And the Communist leaders are those who openly vaunt and proclaim their objective—the enslavement of man. And that is why all of us should be aroused finally,—belatedly if you will, but nevertheless finally aroused—to this enemy of our countries, the enemy of all our civilization.

I remember the day when General MacArthur on his return from the Far East told me, "Make no mistake about it, the primary objective and the first enemy of Communism is religion." Naturally, I knew that. I knew it from the persecution and the killing, the slaughter of priests and nuns in every country that has been overrun by the Communist hordes. But General MacArthur gave a new illustration when he said: "In our retreat from the Yalu River, whenever the Communists found any person to have any religious emblem, around the neck, around his arm, or in his pocket, a medal or a rosary, that person was immediately killed." And we know now all that from what the missionaries have suffered, even the mass mob trials to which they have been subjected and which have been broadcast over the radio to arouse the peoples' hatred against religion. We know that from the way they recruit Communist soldiers by gouging the eyes of men picked at random so they could get recruits to the army. Therefore, we do together, all the United Nations, face a terrific enemy.

Unfortunately, in the United Nations there are those who do not have the qualifications for membership and yet are members while others who do qualify are excluded. So, human organizations and our attempts at world organization have thus far been feeble and futile. But with the aroused spirit of our leaders, we can hope that we shall resolutely face the future and face the foe, because even those who are under Communist domination, even the Communists themselves are enslaved by their ruthless, relentless leaders. I can only ask that we civilians, we priests, and we who are too old now to take up weapons to defend our countries against military dangers contribute what we can and that our contribution will be worthy of the men who bear the burdens as our Filipino boys, our American boys, and other boys who are doing their part in the current warfare in Korea.

And I do hope, Mr. President, that the Filipinos will continue to prosper, as with my own eyes I have seen them prosper, and that you may continue to make progress in prosperity and in power and that our countries will ever associate that progress in prosperity and progress in power with power for peace.

I am grateful to you for your reference to prayers. It is my privilege also to say that not only man power bravely offered to face the common foe, but also the prayers of mothers, fathers, and all the religious, and the priests and the members of all religious denominations, have power. We pray that God in his mercy will grant intelligence and goodwill to peoples behind the Iron Curtain, so that when human ingenuity and human intelligence are unable to find a way, God through his mercy will grant an answer

to prayer power and peace power so that to our prayers may come the answer that mankind sought years and years ago, centuries ago, when God did spare humankind because of the goodness and virtue and the prayers of those who loved him and served him faithfully.

Mr. President, I am grateful to you for giving me the opportunity of meeting the distinguished members of your country and also my brothers in the priesthood, and also my fellow Americans. I assure you that I shall always treasure in my heart my friendship for you and my admiration for you personally and my desire as a citizen of the United States to do my level best to bring our countries more closely associated in the ideas that dominate us and that inspire us to follow God and thus base our countries' prosperity and peace on the Commandments of God and on our love for humankind, love for our own nation, and love for the other nations of goodwill. (*Applause.*)

THE PRESIDENT'S THIRTY-NINTH MONTHLY RADIO CHAT
JANUARY 15, 1952

Fellow Countrymen:

The point of my radio chat this evening is very simple. It expresses my New Year resolve in three C's—this is not a suggestion of the controversial class C sugar which, by the way, has not been granted yet to anybody if that somebody can find class C sugar—*concentration, coöperation* and *coördination* of all our work.

This year we are faced with extraordinarily heavy problems. As we follow the calendar, these problems become the more pressing and complicated. We have to solve them apart and together, according to priorities in the order of their urgency and importance.

Personally, I am anxious to finish my job but I am not just going to rush things. I desire a well-traced plan of action, not a hit-or-miss procedure. I am determined to secure positive and concrete results.

Our program of national action involves billions of pesos to be invested by the government as well as private enterprises, hundreds of thousands of people to be employed, and the happiness of millions of this and succeeding generations. We cannot afford haphazard execution.

But because of the limited period of execution, I desire to impress upon my associates in and outside the government as well as upon the people to be served, that they contribute what may be expected of them in the most systematic and efficient manner.

First and foremost, we must finish our pacification campaign. Without peace and order we cannot properly work and follow our constructive pursuits.

Presently, we need more equipped men to impose government authority and respect for the law. But we need

more and immediate development, too, to achieve economic security. Gun and plow must therefore go hand in hand, efficiently and expeditiously, to secure peace and production, justice and satisfaction, the essentials of domestic tranquillity.

We must go beyond merely preaching and affording protection of civil liberties. We must act positively to provide our liberated people with a life of substance,—at least, a means of decent livelihood. A free man without such means is like a bird flying in the desert, looking in vain for food and water.

Our speedy economic development requires not only the improvement and expansion of our present public utilities and a more extensive exploitation of our natural resources, but the opening without loss of time of new areas of activities. We must accelerate the equitable distribution of our vacant public agricultural lands among the landless in strategic regions of production, and expedite the grant of titles to those who have established their right either as settlers or as purchasers of public lands or government acquired private lands. These people also need guidance and organization for increased coöperative productivity and responsible community living.

We have to expedite the construction and multiplication of irrigation systems.

We must rush the completion of our fertilizer plants.

We should speed up the establishment of our basic industries, the installation and early operation of our hydraulic plants and possible smelting plants in Luzon and Mindanao.

We desire to inaugurate soon our national shipyards and steel mills in Mariveles.

The improvement of social conditions in our centers of population has been occupying our minds, and our government has already spent millions of pesos for the construction of thousands of homes for the low-salaried employees and workers. By June of this year we will have 3,000 of this type in Quezon City alone. We expect to do more, and in other cities, too.

Besides we want to encourage general home building and to improve the living facilities for people who have been induced to quit our slums, establishing healthful worker communities in many cities and municipalities.

We desire to reactivate our mining enterprises and give more encouragement for the establishment of more industries in order to provide more employment opportunities for all.

In general, we are determined to improve our people's living standards and make 1952 a better and happier year for all of us than 1951.

We have, indeed, many things to do this year!

We can only attain our objective more quickly if we talk less and act more. We have graduated from the period of

mere exploration of the possibilities or probabilities of success in our different national enterprises. We are all agreed that the economic development of the country is still the basis of our economic life and the continued enjoyment of the powers and privileges in our new political life.

While different theories or manners of approach to our economic problems have been considered to exhaustion, and there can be no end to their discussion, what we have already decided to carry out must be fully implemented to fruition. We therefore need to *concentrate* our attention. Concentration does not only mean fixed and close attention to the execution of the multifarious details of the program; it also means that those charged to act should not be unnecessarily distracted.

All elements are expected not only to do their own part in the national scheme but to *coöperate* in allowing others to discharge their duties.

Thus coöperation calls not only for positive contribution but for judicious inhibition from interferring in the efficient execution of other people's jobs. Those hitched officially or privately in the prosecution of their respective responsibilities should be given all the opportunity, all the encouragement and all the assistance needed to measure up to the people's expectations in the accomplishment of their tasks.

The elections over, we should be able to relax, to relieve the atmosphere of political or partisan tension, and to restore a general feeling of normalcy. If we cannot avoid talking politics—for we have become addicts ever since the privilege of suffrage was placed in our hands,—let us talk constructive politics: politics that helps build and not destroy.

There will be enough time for politicking again when the next election comes. In fact, we needed only two or three months of campaigning before the last election. Our responsible leaders could do a whole lot to minimize the partisan spirit impairing the attitude and efficiency of our citizenry in its efforts at nation-building.

So the best possible coöperation from those who have just gone through recent political battles is to restore their nerves and stop agitating, for the time being, while we are all engaged in the economic development of our country. Political agitation has been responsible for the failure or delay in many of our constructive pursuits.

To contribute our just share in developing our country, it is necessary that we coördinate our activities. There must be coördination not only of the activities of the different branches of the government in the execution of their respective parts but also of the private activities with the official activities.

The program cannot be left alone to the government for execution. Corollary action on the part of private persons

and entities is needed to attain integrated national development.

This calls for the spirit of partnership between government and private initiative. The government has taken steps to dispose of the enterprises heretofore financed by it in favor of private entities or individuals ready and desirous to continue developing them. Several government corporations and industrial establishments have already been transferred to private hands.

The government has not completely divorced itself from those enterprises. As long as its assistance in their continuation or promotion is still needed, the government has seen to it that it share in their financing, and provide technical help through its officers.

In certain instances the government has purchased the necessary equipment or units to be operated in order to facilitate the progress of a given enterprise. It has, for example, acquired ships for the development of our mechant marine. Under the ECA program, the government also facilitates the acquisition of equipment which the different private enterprises may need.

The government is speeding up the construction of more roads and bridges, and clearing lands to open new regions for development by private enterprise especially in the virgin regions of Mindanao, Mindoro, Palawan, and Cagayan Valley.

United States assistance through the ECA is giving the Philippines a big boost in our agricultural and industrial development and in the solution of many of our social problems. With our mutual defense pact, America has greatly strengthened our external security. In such an atmosphere there is no reason why we should not accelerate our growth and development.

Our people should fully appreciate the opportunities being afforded them by the government which in many cases has become not only the industrial but the capitalist partner. All that we need is to coördinate the activities of the government with those of private enterprise.

I repeat: our new resolve is concentration, coöperation and coördination. Let the three C's govern our action as a people this year and in the years to come.

EXTEMPORANEOUS REMARKS OF THE PRESIDENT AT THE LIBERAL PARTY CAUCUS AT THE SOCIAL HALL, MALACAÑAN, JANUARY 27, 1952.

I have come from a campaign for unity covering four days of visit to Cebu, Leyte, Samar, and Masbate. It was an opportunity for me to practice public speaking. I have long neglected that phase of our public duty. The Nacionalistas have been allowed to enjoy practically a monopoly of speech-making and lambasting to our discredit.

This morning, I want to give members of Congress of our party a chance to practice speech-making in Malacañan. I shall not, therefore, take much of your time. You will have all the opportunity to say something or denounce whatever you wish just to get it out of your system so that when you leave the palace you will feel fully satisfied.

For the moment, I think it is good that we all realize the necessity of pulling together in view of the grave responsibility we have assumed. The session will open tomorrow. You all know how divided and depleted our ranks are, especially in the Senate, and how disorganized we appear because of recent differences even among ourselves. The time has come for us to show again that we are united and that we are ready and determined to tackle every responsibility we have undertaken.

I have only two years more to go, but many of you still have a number of years remaining. I know you do not want to lose the ground you have gained during your incumbency either in the Senate or in the House. So, we must cooperate and acquaint our constituencies and all the members of our party with the responsibility we have assumed of running this government.

The senatorial victory of the Nacionalistas does not mean that we have to renounce our responsibility or that we have to turn over this administration to the Nacionalistas. We still have our duty, we still have our responsibility, and we still have the privilege and opportunity to accomplish those which we believe we can finish before the end of two years.

I am very much concerned about the realization of a great portion of our program of administration. It is necessary that I call upon you to assist me effectively in carrying out this program so that after two years we shall be able and prepared to present to the electorate a bill of accomplishments that will form the basis of our aspiration for further enjoyment of the confidence of the people in running the affairs of the nation.

Tomorrow, therefore, it is imperative that you remember this great responsibility. It is important that you get together and leave nothing undone in your effort to advance our political position. We must reconcile or adjust our apparent differences which people interpret as a weakness on our part. We must act with more courage and determination, and with a higher sense of duty. This is the only way by which we can accomplish our task.

When I read my message tomorrow, I will recommend ten measures on which I ask for your early action, especially on the appropriation which we need to provide typhoon sufferers and victims of the Hibok-Hibok disaster with immediate relief. I will ask you also to adopt such measures

as may be necessary to give further relief to the coconut planters. I observed in my visits to Cebu, Samar, Leyte, and Masbate, that many coconut plantations have been devastated in such a way that they will require from three to seven years to recover. Perhaps we may have to revise the assessment of those plantations, such revision to be in force for at least three years so as to afford the people sufficient time to adjust themselves while they may switch to other agricultural and industrial activities. To require them to pay the same rate of taxes when the coconuts are no longer bearing fruit would be unnecessary cruelty.

I hope we shall not have to recommend a new measure. My first impression was that we could authorize the provincial board to make immediate reassessment in the provinces affected and enforce a readjusted assessment for a period of three years as a measure of relief to typhoon sufferers in the coconut region.

I have seen many schools, bridges, and municipal buildings blown down in a good number of municipalities. Reconstruction in those places would be almost impossible without any assistance from the provincial or national governments. These municipalities must be helped, but the national government no longer appropriates funds for such purpose. So special appropriations must be provided for them. I will include this in the special appropriation which I am going to recommend as a relief to typhoon sufferers.

You will recall that in 1948 we had as much as four million pesos approved and set aside for relief in case of calamity or disaster, or other emergency. That sum used to be managed by the PACSA, now a part of the Social Welfare Administration. The amount was reduced to one million pesos in the last appropriation. It now turns out that there is nothing left for the victims of the Hibok-Hibok volcano and the typhoon sufferers.

As you well know, I had to resort to appeals to the public for contributions with which to supplement the amount made available from sweepstakes funds. We need a more substantial sum from charitable people. We need at least ₱1,300,000 to cover the difference between what is available from the sweepstakes funds and the total amount to be distributed to the typhoon sufferers and volcano victims. It will thus be necessary to recreate or restore the original amount appropriated four years ago in order to provide relief in case of further disaster and calamity.

The reason for reducing the appropriation was the suspicion that the four million pesos was being utilized by the administration for electoral purposes. We did use part— of the money to hire a number of social workers, inspectors and, in some cases, political leaders in order to accommodate

senators and congressmen. However, what we spent for that purpose was quite negligible to justify the reduction of the original sum, especially because of the great benefit that could be derived from it in times of stress.

So I recommend that you consider the necessity of recreating or restoring that amount for our reserve in case of calamity. The weather authorities have come to the conclusion that we now have here a regular typhoon belt which easily passes from the southeast, striking only Samar, Leyte, and other neighboring provinces. They have discovered that the belt has been widened to include even Northern Mindanao. It sweeps over Cebu, Panay, Palawan, and Mindoro, as well as the northern provinces from southern Luzon to Cagayan.

With this climatic condition to be reckoned with, we must have some reserve with which to help the people in case another typhoon, perhaps worse than Wanda and Amy, may batter our shores in the future. So, let us consider seriously how to aid or rehabilitate typhoon sufferers in case another calamity should smite us once more.

Other measures I am recommending in my message will be of similar importance to all of us. One of them is the creation of a rural credit bank. This is important because we are trying to speed up production. We are encouraging small farmers and tenants to produce more. Such bank will extend credit facilities to them without much red tape in the form sometimes of character loans. Even the most modest Chinese retailer or merchant can now obtain such loans from the Bank of Communications and the Bank of China. This encouragement has been responsible for the flourishing trade of small Chinese retailers. The same thing can be extended to our farmers and tenants.

The proposed rural credit banks, according to studies made by the Central Bank, will be distributed in strategic points of the Philippines. They will be directly supervised by the Central Bank and supplied with capital to be taken as initial investment from the counterpart peso fund of the ECA aid so that we shall not have to make a special appropriation to begin with. The counterpart peso fund will be accumulated for equipment and supplies to promote industrial and agricultural expansion and will be sufficient to help organize the initial fund to be created under the proposed bill.

Another bill I consider of importance now, and it is the fruit of my observation, is an amendment to the land law, limiting the area that can be sold or leased to people. According to investigations that I ordered made, many people who have applied for lands—thousands of hectares of lands—have not cultivated the land. Some of the lands have been abandoned or neglected. Others have become

the subject of speculation. A good number of our people are rushing to Mindanao, particularly from the Visayan islands. When they occupy lands there they discover that such lands have already been leased or purchased by some scheming individuals.

We must break these big landholdings. Those absentee landlords are still in Manila, and many of them are your friends. They do not cultivate the lands. They are just waiting for others to sublease them and get something out of nothing. In reality they have not invested anything. All that they do is prove that they own the title and they can dispose of the lands as they please. These lands should be broken in such a manner that only those that the owners can cultivate should be retained by them. Future applicants should be given only a limited portion of land so as to make room for those who want to go to Mindanao. So many people in Luzon are now attracted by the prevailing atmosphere of tranquillity in Mindanao, especially after observing the success attained by the settlers in Capatagan and a great part of Cotabato Valley. They go south every day, looking for lands. You will find them squatting on squatters. I think a time will come when serious conflicts will arise in Davao and Cotabato because the men are fighting for the right to cultivate the same lands.

In view of the situation, the land law must be amended so that the landless and those who have very little land will have a better chance of cultivating those idle lands heretofore made the subject of speculation by some people.

Another bill I want to include in my message is the revision of the minimum wage law. We have encountered great difficulties in enforcing the law because we have not inserted a provision in the law to compel employers to register all their laborers, how much each of them earns, and how long each of them works.

We have an eight-hour labor law, but it is practically ignored. In the campaign for a more vigorous enforcement of this law, we should take advantage of the opportunity to revise the minimum wage law and the workmen's compensation law, as well as the law on rice tenancy, which has been the cause or source of an endless conflict between the landowners and tenants in Central Luzon, particularly in Tarlac and Pampanga, because different interpretations are given to the sharing basis which has left many bewildered and confused.

The tenancy law must be clarified so as to avoid further conflict and headache on the part of the government which has to suppress violence and riots resulting from misunderstandings as to the real meaning of the law.

Another bill I have in mind to include is an amendment to the Election Law. Flying voters must be eliminated.

We must do the eliminating ourselves and not let our political adversaries initiate the move.

The most important bill to be considered is the one appropriating funds for the typhoon sufferers. If we are going to give relief to the people at all, we must act immediately before there is hunger or much suffering. We cannot enact laws or carry out legislative program unless we are guided by a spirit of discipline based on a deep sense of responsibility to carry out our program of action.

I therefore recommend that you get together in both houses, pull together, assume the responsibility, and see if you can attract other elements to support our stand because it is imperative that we fulfill our commitments to the electorate in a manner that will insure the welfare of our people.

For the time being, if there is anything that you think ought to be done on my own initiative, let me know it because I want to be in perfect understanding, in perfect harmony, and in perfect helpfulness with you. I wish you would show me the same spirit. (*Applause.*)

EXTEMPORANEOUS REMARKS OF THE PRESIDENT BEFORE THE MEMBERS OF THE U.T.O.P. AT COCKTAILS, MALACAÑAN PALACE, JANUARY 27, 1952.

I am very happy indeed, ladies and gentlemen, to receive you at the palace instead of my visiting you in open convention. There is a big difference between my visiting you and your visiting me. If I go to you, I must have something to tell you. If you come to me, you are the ones to talk to me and I can listen to you. And it is better that you come to me because I lack the knowledge and preparation to speak at length on the subject with which each and every one of you is especially acquainted or on which you are an authority. As a matter of fact, I am placed at a disadvantage, like the poor, unprepared preacher who, in order to save himself from embarrassment, had to tell his people frankly, "Ladies and gentlemen, I don't know much about what you are going to talk about." On my part, I will explain here. I don't know much about technical knowledge or technology either, nor about those industrial sciences in which you have specialized. However, I think we can agree on fundamentals. We can agree that this is an age of industrialization in our country and you have come to the forefront.

Our government has embarked upon a new adventure. Heretofore we have been regarded merely and purely, if not exclusively, as an agricultural country. We are now trying our best to tap all the possibilities of securing more income for the government. For that purpose, we are

employing all the technical knowledge available in our country in order to promote industries which appear to be possible of development. So we thought hard and long in our efforts to find new avenues of engaging the technical know-how of our citizenry.

Thus, we adopted in our ambitious program—total economic mobilization—our country's industrialization which has begun with the establishment of the basic industries such as hydraulic power in Lumot, in Ambuklaw, in Maria Cristina Falls, and other places, including strategic regions like Ilocos Norte, where we have another project of harnessing the Gasgas Cascade. Perhaps we shall have to develop other water power in the Visayas and in the Bicol provinces. For the moment we are constructing a steel mill at Mariveles and a shipyard in the same place.

All these have been initiated for the purpose of furnishing our people with light and power with which to develop first our cottage industries and eventually to expand our industrial activities. Mining, metallurgy, and other minerals—all these have been exploited in the past. There is need of engaging our attention in other phases of our industrial life not only to derive income that we expect from their exploitation but also to utilize the new genius, the new technical knowledge, that our generation can offer at a time of world readjustment and industrialization.

We have observed of late that wars are no longer fought with sinews and bullets alone. Three or four decades ago the sword and the gun were usually the general weapons. Now, with atomic energy, war is won by scientists, technicians, and technologists, and not by the brave soldiers of yesteryear. The heroes of today are those who are found working in small rooms, analyzing, preparing, and putting in final shape the most dangerous weapons the world has yet known. In our age, atomic energy and atomic bombs will spell the life and death of nations.

And you in the Philippines who specialized along these lines in preparation for our country's industrialization and for other activities, now have the opportunity to use your knowledge, your vision, and your intellect for the future stability of your country. We are scouring the whole country, going to places heretofore untouched for possibilities of development or exploitation. We know we have enormous potentialities. We usually brag about the unlimited number of our mineral deposits. We have high class materials, all essential to our industrial program. But we have not as yet been able to locate entirely our wealth possibilities. Nor do we know exactly who will map out for us the plan of their utilization.

In the early stages of her organization Soviet Russia sent out scouters to every nook and corner of her vast

territory in order to find out the possibility of producing power for her impending industrialization program. The result of so intensive and extensive a search was that they were able to evolve a general program of industrialization so aggressive and systematic that in five years they emerged as a first class power.

That was the origin of Soviet Russia's five-year plan. Since then she has been extending and continuing with the five-year plan until today. We don't know what is going on in Russia at present, but everybody believes that she is strong behind the Iron Curtain, so strong, in fact, that she now aspires to dominate the whole world.

We are not that ambitious in our country, but we, too, have the great duty to make the Philippines stronger, wealthier, and better.

Our importing technical men from abroad resulted at a time in a rivalry between Americans and Italians for the construction of the Maria Cristina Falls power plant. We thought then only a few Filipinos could understand how to dig tunnels and produce electric power from water falls. Although many of you thought you could do it, there was not enough of that self-confidence which we should possess and you with your specialties often wondered whether you could accomplish the work or not.

Fortunately, Mr. Rodriguez showed his capacity, ability, and vision. With grim determination and the great hope and faith in the accomplishment of his task, he has assured me that this year we could inaugurate the Maria Cristina Falls power plant and fertilizer plant.

The same thing has happened at the NASSCO in Mariveles. We thought we would have to import some naval engineers to construct the shipyard there. But we did not. Mr. Abrera and his associates assumed the responsibility and the shipyard is now about to be finished. By the end of this year, I think we can also inaugurate it.

Given the opportunity, I know many of you could develop your technical knowledge, do something extraordinary and practical. It is an encouraging sign to have in our midst people who can transform this country into an industrial center.

In my early study of economics, I came across comments on how Egypt succeeded in extracting electricity from peanut shells, on how she imprisoned the wind in order to secure power to move the industries that she had. Something of that sort, perhaps, could be invented or created by you in time. I want to assure you that the government will give you every opportunity to develop yourselves so as to place you in a position to vie with other technical men in the world. I do not believe the Filipinos are a backward people, because they have shown themselves to be the equal of any people in intelligence, in skill and inventiveness.

So, I thank you for visiting me because your presence gives me encouragement to proceed with the industrialization program. I count upon you, and I am happy to acknowledge your pledge of help should I call on you.

Now, let us think of new things, inventions that will enhance and improve our national life. Even the illiterate farmers in our country farms have already devised means of producing mangoes out of season. They say they utilize smoke to kill the germs that attack mangoes. If we can make mango trees bear fruit twice instead of only once a year and can harvest rice twice instead of only once a year, possibly we can also find a way by which a hen would lay twice a day instead of only once.

This, gentlemen, may sound queer today. But science has no limit. We have conquered the sea and the air. We have annihilated distance and space. Pretty soon we will conquer the planets and the sun. With your technical knowledge, preparation, and efforts, everything is possible.

So I hope that the Filipino technologists who have gathered here this evening will find a way to utilize their intelligence and their know-how to discover something new for our country. We cannot stay stagnant. We grow every day in wealth and in population. Our population is increasing every year by 300 to 400 thousands. We have to provide our children with all the thousand and one things that a civilized life demands.

Something must therefore be done because we cannot transfer our country, nor extend our territory or our jurisdiction as the big powers are doing in order to have an egress for an excess population. By nature our territory is limited. So we have to utilize all the power that God has given us in order to produce more and more in keeping with our growth.

Gentlemen, you and I have a great responsibility. I hope you will be wide awake, determined, and aggressive in your research so that in years to come when we meet again, you can say, "I did something after that talk." I want to check up in a year or two to see if we can do something to promote the welfare and happiness of the people which are yours and mine to serve. Thank you very much. (*Applause.*)

STATE OF THE NATION MESSAGE OF HIS EXCELLENCY ELPIDIO QUIRINO, PRESIDENT OF THE PHILIPPINES, TO THE SECOND CONGRESS, THIRD SESSION, JANUARY 28, 1952.

MR. PRESIDENT, MR. SPEAKER,

MEMBERS OF THE CONGRESS:

I welcome you once again as you begin this third session of the Second Congress. I welcome, especially, the distinguished new members of the Senate. Our people have

willed that the ranks of the opposition be bolstered. The fiscalizing mission of the minority will thus have greater opportunity of accomplishment. It is my hope that in such a task it will be as fruitfully effective as it should be patriotically cooperative, ever mindful of our joint responsibility to keep this nation always unified. The institutions which we have built and the Republic which we have erected belong to us, one and all, for us to honor and protect.

The age in which we live and the international association with which we chose to be identified make us conscious in every phase of our lives that we have a country to defend, to develop for our people's welfare, and to strengthen as a bastion for internal peace and for the peace of the world.

The facts of history require us to consider under the present world set-up that, while there are still leading nations, no longer are there big and small nations apart from one another. We are divided into groups, practically into two major groups—one believing in a world order under the theory of enslavement by a dominating power, the other under the theory of co-existence based upon the collective authority of free democratic governments. The former fosters chaos and confusion to gain adherents, the latter develops the spirit of self-help to strengthen each unit as a composite integral part of a world organization dedicated to universal peace.

You and I, regardless of party alignments, have but one purpose: to seek the welfare and happiness of our people. In serving them, often we have had different points of view. We shall perhaps differ time and again in approach and in procedure, but never in fundamentals. Differences are salutary when born out of individual freedom—of thought and action, and restrained by unity of purpose—love and solidarity of our fellow countrymen. Provided we always keep in mind, as we did in the last sessions of the Congress, that all we, each of us, are trying to do, is to contribute our utmost in promoting the safety and well-being of our people, democracy will flourish as a vital dominating force in our national life.

We showed this in our last popular experiment. Whatever the consequences to us politically, we secured the free and untrammelled expression of the people's will, for only on the rock of democracy can we build a free Philippines.

To build it required centuries of sacrifice in blood and treasure. Layer by layer, stone on stone, on the bones and

ashes of those who preceded us, each generation in its epoch and in its regime left the sediment of its labor and influence to give us the country that is ours today. Thus, whatever we have at this hour, everything that we enjoy, did not come about full-grown overnight, is not solely the work of today. It is the result of a continuing process, as each, in his time, contributes his genius and vision as well as his sweat and sinew to leave to those who follow a country better than he found it, winning for it with each passing year a growing measure of admiration and respect.

And as we look back and realize the vicissitudes and misfortunes that have been our people's lot in the recent past, devastated and torn to pieces as we were, it should give us renewed courage that not only did we survive, but that we survived with dignity and honor.

Today, this our epoch is one of economic and political survival, of internal and external security. How did we reach it? I shall now report on how we have been contributing our modest share in the last three or four years and dwell on the important phases of our national life and the processes which led us to the status we now enjoy.

BACKGROUND

But before doing so, allow me to review in brief retrospect our struggle for survival. You will recall that when we reconstituted the Commonwealth Government in 1945, we had an economy left prostrate by the war. We did not have the revenues needed to finance the normal functions of government. We had to seek relief and assistance from the United States to supplement the meager ₱36,000,000 available in the General Fund. Relief and assistance were granted us in various forms: in foodstuffs, clothing, other relief goods of all kinds, surplus equipment and supplies of the United States forces in the Philippines, and cash in the form of war damage payments, pensions, gratuities, and grants and loans.

Our people, denied of even the essentials during the Japanese occupation, reacted to this sudden flow of help by spending much too freely for their own good. At the same time, loose firearms in the hands of people who helped us in our liberation abound everywhere; still trigger-happy, many individuals organized themselves into bands, enjoying as well as endangering life in the outlying districts, and even in our midst, at the point of the gun. This fact as well as the moral trauma resultant of the war and vestigial

inequalities rooted in centuries of servitude unfortunately led unscrupulous and misguided people to graft and corruption, to disorder, and gradually to dissidence.

Thus, when we entered upon the first phase of this administration, which was merely a continuation of the Roxas regime cut short by the demise in 1948 of our dear friend, President Roxas, we were faced with two great problems: the maintenance of peace and order and the strengthening of the confidence of the people in their government—both of which occupied my mind upon my assumption of office. This brief but painful interlude in our political odyssey, aroused fear and distrust both here and abroad. Our first step was to purge the government of dishonest officials. We ordered the investigation of the Philippine Relief and Rehabilitation Administration (PRRA) and later the Surplus Property Commission, which were the foci of infection. The investigation of the first brought forth negligible results, but the investigation of the second resulted in the dismissal, prosecution, and conviction of many of its personnel. The investigation was extended to other branches of the government and, similarly, other dismissals, prosecutions, and convictions were the result.

Simultaneously, we directed our attention to the suppression of banditry and dissidence, offering to the latter amnesty which shortly thereafter—not through the fault of the government—was repudiated. But we were not discouraged and we continued unabated our moral crusade and campaign for peace and order. These problems became more complicated as internal discontent, disturbance, and insecurity increased. As if these were not enough, the clamor for back pay and the murmurings of rice crisis and recurrent school crisis harrassed us. On top of these came the grave problems affecting our external security. We were poor, deep in debt, assailed and embarrassed in our struggle for stability. And we were drawn into a struggle not only for our national survival, but also for that of democracy in a world rent by an ideological warfare that had congealed into a cold war.

INTERNAL SECURITY

We had to reorganize and strengthen our armed forces to cope with the increasingly grave situation. We intensified our peace and order campaign, adopting new methods of dealing with the local foe as we prepared to face him in Korea.

The large gains made in the campaign this past year are now of public knowledge, and given due recognition here and abroad. We still have elements inspired from abroad plotting unlawful seizure of governmental power, constantly seeking "to undermine the land of their birth in the interest of the land of their ideology." They were in a fair way to accomplishing their nefarious plans but for the systematic and determined action by the defense forces of the Republic which not only nullified and frustrated, but also dispersed, these covert elements and disrupted their time-table. With excellent intelligence work we were able to round up the members of their politburo and secured their prosecution and conviction. There are now more surrenderees than captives or Huk casualties; many of them are settled in government farms with their families, awaiting the routine process to make their present landholdings their own. By a more intensive follow-up in our campaign and more extensive realization of our program of constructive attraction, we hope to achieve the permanent eradication of the threat that the subverters posed.

I must apprise you of the fact that the operations to restore peace have not been without their cost. The casualty total is roughly 900, with 350 killed and 550 wounded. There are approximately 1,500 men in our army hospitals. For those who unselfishly and heroically gave their lives, for their widows and orphans, I bespeak your heartfelt support and assistance.

I wish, in solemn gratification, to stress the record of courage and heroism of our troops in Korea. They have covered themselves with glory and made every Filipino proud. Through their sacrifices we are giving our stint in the epic fight for freedom and peace.

ECONOMIC RECOVERY

Our country saw during the past year a remarkable improvement in its general economic condition. A coordinated set of remedial measures in the monetary, fiscal, and production fields, together with improvements in administrative organization, and in the peace and order condition, dispelled almost overnight the despondency and irrational apprehension that seemed to have caught hold of business and of productive segments of the agricultural population. General confidence increased and with it came a new resolve on the part of our people to make

this land a haven of peace and prosperity for the coming generations.

Stimulated by favorable international prices after the outbreak of the Korean War, the production of our export industries expanded. This favorable turn of events together with the strict conservation measures adopted during 1950 enabled us to raise substantially the level of our international reserve and to introduce a series of measures which had the immediate welcome effect of temporarily liberalizing the control over imports.

The psychological effect of these measures as well as the substantial amounts of goods that came during 1951 were two of the main influences that pulled down prices to levels more consistent with the income earned by the great mass of our people.

Contributing in no small degree to the restoration of stability in internal prices were the measures taken towards the end of 1950 and during 1951 to increase the revenue of the government. All these efforts were complemented by a restrictive credit policy on the part of banking institutions which brought about a further reduction in the money supply.

As a result of these measures, the cost of living which rose from June 1950 for a year has dropped substantially since. Meanwhile, production improved greatly not only in the export industries but in other fields, especially mining and manufacturing. The index on the physical volume of production has risen from 97.5 in 1950 to 107.1 in 1951, with 1937 as a base. There is more manufacturing activity going on now than ever before in the history of this country. National income for 1951 was ₱5,120,000,000 as against ₱4,608,000,000 in 1950. This rapid increase in productive activity reflects considerable new investment, both foreign and domestic, in plants and equipment which would not have been made had there been no restoration of confidence in the future progress and stability of this country. Inquiries from parties abroad contemplating investment of capital in the Philippines have been on the increase, and our economic recovery has been the subject of favorable comments on the part of many competent observers abroad.

Several of the basic development projects that the government has financed are in advanced stages of construction. The power projects, such as the Lumot Diversion Pro-

ject, already completed, the Maria Cristina Hydroelectric Power and Fertilizer plants both to be completed at the end of this year, and the Ambuklao Hydroelectric Power Projects, now also under construction, will give a tremendous boost not only to industrial development but also to a more diversified rural economy. The funds provided for the construction of irrigation projects and the purchase of fertilizers give further assurance of our steady march toward the attainment of self-sufficiency in food crops, especially rice. The construction of additional textile mills such as the one now in operation in Narvacan, Ilocos Sur, represents the beginning of an effort on our part to reduce this country's dependence on outside sources for one of the elemental necessities of life.

The immediate result of the economic measures we have adopted during the past year and a half is to preserve for our people the real value of their worldly possessions. The inflation in prices has been not only arrested but rolled back, thus restoring especially to the lower income brackets the real goods and services that they could claim with their money income. The operation of the minimum wage and tax laws implemented last year brought about a wider and more equitable distribution of the money income in the economy as a whole. Together with the reduction in price levels, these measures could be expected to bring about a permanent improvement in the welfare of our people.

Our international economic relations and prestige have also improved as a result of the change for the better in our domestic situation. The regard in which the Philippine peso is held in international markets today is so much higher than a year ago. No longer is its value doubted. It is regarded as one of the most stable in the world. Thus, our ability as an independent and sovereign people to manage our own economic affairs is no longer underrated.

GOVERNMENT FINANCES

Our record in the field of fiscal policy in the past year is worth underscoring. It is well known that government finances have been severely strained during these postwar years due to the mounting expenditures for defense and peace and order, for public instruction to keep abreast of the increasing school population, for the reconstruction of war-damaged facilities, for the rehabilitation of govern-

ment corporations, and for reactivating services paralyzed during the last war. The time since liberation has been too short for the country to recover from the ravages of the war. Consequently the national economy could not yield sufficient revenue from taxes or other sources to meet not only current irreducible expenditures but also extraordinary expenditures for economic rehabilitation and development and for various urgent social services.

The seriousness of the situation at the end of 1950 was such that in my Message to the Congress on January 22, 1951, I said that 1951 was a year exceptionally heavy with decision and destiny; that your actuations during your second regular session might spell the difference between irreparable disaster and survival to our country.

It reflects creditably on the patriotism of the members of the Congress that you proved equal to the situation. Under the most adverse conditions, you approved revenue measures that enabled the country to cope with the emergency. Never before have our revenues been as high as they are in the current fiscal year. I shall deal on this subject in greater detail in my budget message.

For the time being, I am particularly happy to report that during this period we were able to complete the final payment on all pre-1934 dollar-bonded indebtedness in the United States. We are on the way to liquidating the advances from the fiduciary and special funds. For some time now we have not borrowed from the banks for budgetary purposes. We have resumed paying some of our sinking fund obligations including the first installment on the loan secured from the United States Treasury. And we have been able successfully to convert, after paying an amortization and interest of ₱7.1 million, our $60 million loan with the United States Reconstruction Finance Corporation from a two-year into a ten-year loan payable in equal twenty semi-annual installments starting January, 1952.

ECA AID

With this improvement in our financial climate, the government of the United States began the implementation in this country of the program of economic assistance promised in the Quirino-Foster Agreement. ECA aid began flowing into our economy in the form of fertilizers, irrigation pumps, grants for the rehabilitation of agricultural colleges and the

establishment of experimental stations and extension services, eradication of plant diseases, land survey and road building programs in Mindanao and other areas, public health promotion, survey of basic mineral resources, and promotion of cottage industries. It is our hope that in the coming months, this flow of assistance will continue to increase in volume, for there is no doubt that it will accelerate our progress towards a higher level of production.

But while we are perhaps entitled to take pride in these substantial achievements, we cannot relax in our efforts to put this country on a truly stable economic basis. There is much still that remains to be done. The discipline that we have had to impose on ourselves over the past years cannot as yet be relaxed. The last two years have given us some time to acquire valuable administrative experience in the operation of economic controls. The maintenance of these controls is still necessary for the public welfare. They can only be removed after the necessary adjustments have been made in our international economic relations. It is vital that we review our trade agreement with the United States, in order that it may be placed on a more equitable basis, in keeping with present-day circumstances in both countries. A readjustment is essential to our achievement of a more stable and balanced economy.

While it is true that we have attained a measure of financial stability in the domestic as well as in the international field, it is still necessary for us to continue exercising discretion and vigilance in the expenditures not only of public but also of private resources. We must at all times remember that our financial resources are limited and that the greatest care is needed to insure their use in the most efficient manner possible. Having committed ourselves to a policy of economic development as the only solution to the problem of poverty and under-production, we must mobilize all our resources and exercise the greatest care in their investment. While the assistance of our friend and ally, the United States, would materially accelerate this process, only our own resources can support it on a permanent basis. Fundamentally, the spirit behind the ECA aid is development through self-help. Only by showing this spirit can we expect more substantial help than what we have heretofore received. ECA is not manna or a substitute for dole, much less a premium to complacency.

And while we were able to bring down prices substantially, our vigil over inflation is far from over. We are fortunate that while the great nations of the world are engulfed in an inflationary wave under the impact of huge military programs, we here in the Philippines have controlled it and have prevented its running away with our earthly possessions. We must keep it controlled by limiting our expenditures to truly essential purposes and well within the revenues which we are capable of producing.

LABOR, RELIEF, AND SOCIAL SECURITY

We have established a group of governmental activities which deal with the satisfaction of the basic needs of our citizenry. Our people ask for little after their need for security—the security of their person, their property, and their freedom,—has been vouchsafed to them. But our government as any other present-day government has gone further. We have endeavored to assist the citizen in his efforts to build up a small competence for himself and his dependents. We have therefore emphasized the administration of the public resources in a manner to provide work and earning opportunities for the citizen to secure him food, shelter, and clothing, as well as, if possible, a modicum of sustenance and comfort in sickness and old age.

We have constantly been improving the pay of those who occupy the common ranks of both public and private employment. This past year we passed the minimum wage law. But it will perhaps be necessary to revise this legislation as well as the Workmen's Compensation Act and the 8-hour labor law to make them easier of enforcement and more compatible with present conditions and exigencies. The same thing should be done with the Rice Tenancy Law so as to clarify existing doubts regarding the application of the 70–30 sharing in the harvest. We shall continue the furtherance of the protection being accorded the individual laboring man. For his health and security, as well as for the protection of his rights, a vigorous campaign for the enforcement of the laws enacted for his benefit, which are also for the preservation of his employer, is being waged and shall continue unabatedly.

The welfare of our workers who have seen fit to search for well-being abroad will likewise be our continuing concern.

As important in our agenda on behalf of labor, is that which deals with land distribution and settlement. This last year, 1,686 settlers, not counting their dependents, have been accommodated in land reservations in Cotabato, Bukidnon, Lanao, and Isabela. Our settlement projects today have a total population of 115,000. These do not include families from Luzon and the Visayas who of their own accord go to Mindanao under the law you have authorized. Resettlement work will be pushed through with more intelligence and vigor. The great purpose of this project must not be lost in its detail. It is to vouchsafe to each man a place truly his own. It is not to increase the holdings of those who already have, or to increase the number of absentee landlords. These groups do not need government assistance. They are capable of taking care of themselves. Settlers shall therefore be selected from areas where feudalistic tenancy still persists to the present day. In view of the limited areas available for settlement in proportion to the great number of landless people, it may be necessary to consider the grouping of such settlers to operate government farms under contractual arrangements. In this way, we could accelerate the production of the staple commodities of which we are in daily demand.

For our floating labor populations in industrial communities, I wish to inform you of the progress in our housing program. The housing program for the low-salaried in both public and private employments in the City of Manila is being accelerated. One thousand seven hundred seventy-one housing units have been built at a cost of over ₱5 million since 1948. The construction of 655 more is being completed in a few months. Our target for this year is a total of 3,500.

A salutary consequence of this program is the awakened interest that private investors have developed in undertaking similar low-cost housing projects in Iloilo, Baguio, and other centers of population. I have just organized the Home Financing Commission created by Act No. 580 you have recently enacted to supplement and coordinate our home construction policy.

Our disaster relief activities have been effective these past two years. But although well coordinated, they need better

support. We felt this great necessity during the last two devastating typhoons, the worst in many years in the Visayan provinces, and during the recent eruption of the Hibok-Hibok Volcano. We have leaned heavily upon our people for voluntary assistance to the victims and casualties of these disasters. I wish to stress the necessity of restoring the appropriation originally given to the Action Committee on Social Amelioration, now merged with the Social Welfare Administration, in order to provide for adequate relief for victims in such disasters and other calamities, especially the recent typhoon sufferers.

The victims of the 1951 public disasters will take years to rehabilitate themselves. The coconut industry in the Vasayas has been practically totally damaged. In many places it cannot be restored to productivity except by replanting. This means for the next three to seven years sectors of our population dependent upon that industry for a livelihood will have to shift elsewhere. The damages to the sugar, corn, and rice industries are not as extensive but they have set back these industries and their repercussions will be felt in the coming months.

PUBLIC HEALTH

Other than the consequences of the great disasters that occurred during the year, the state of the public health may be considered normal. No epidemic visited the country. The birth rate increased; the total crude death rate decreased. Infant mortality also decreased. At the inception of every natural disaster, public health forces were immediately deployed to take care of casualties and to prevent the development of epidemics.

We must continue to improve the public health to conserve manpower for the development of our agricultural, industrial, and other natural resources. We have made notable progress in lessening the scourge of malaria, tuberculosis, malnutrition, mental ailments, and other debilitating diseases.

Environmental sanitation and health education have been promoted. More artesian wells and sanitary facilities have been provided. More hospitals have increased available hospital beds. More charity clinics, puericulture centers, public health nursing establishments, and public health laboratories have been activated.

Preventive and sanitary measures against infectious and quarantinable diseases have avoided epidemics from indigenous sources and from abroad through international traffic and trade. The production of more vaccines and sera has been notably increased. Our BCG laboratory is rated the best and the largest in this region. We are producing vaccines for Formosa and Indo-China, besides filling our own requirements.

EDUCATION

Education is another fundamental of national progress, from the standpoint of society and of production efficiency. No legislative body of the Philippines, since the days of the First Assembly, has ever been remiss in generosity for this function of public service. It is our established obsession that no child in the Philippines should be bereft of instruction. I am happy to say that in the past year as well as in the previous two years this Republic saw to it that the so-called school crisis has not recurred.

Last October, upon being informed that thousands of children would not be accommodated, I authorized after consultation with the Council of State the release of ₱1,630,000 to cover the employment of additional teachers. We have now an elementary school population of four million. In the ratio of school enrollment to total population, we rank next to the United States, the highest of any country in the world.

Through administrative adjustments we have strengthened the holding power of the schools and have brought about a much lower rate of withdrawal. The two-session program has been partially restored. Increases in enrollment have also been noted in the secondary schools, in normal and technical schools, and on the collegiate level.

Community school programs bringing teachers and pupils closer to their community are being instituted. Working with other agencies, the schools are assisting in improving community life along health, social, cultural, and economic lines.

Curricular offerings are being adjusted to inculcate work consciousness and to provide work experience along the lines indicated by the dominant occupational activities and needs of the community. One objective is the revival of

characteristic local cottage industries. You have facilitated this extra-curricular work by your approval of financial support of pre-service vocational teacher preparation, especially in agriculture, trade, industries, and business.

As an incentive to further vocational training, we have converted the Muñoz Agricultural School into a college, in line with our policy established in the conversion of the Philippine Normal School into a college and various provincial trade and agricultural schools into national regional institutions.

Private schools continue to supplement government efforts in education. But the rapid growth of the private school system poses the problem of effective supervision for the maintenance of scholarship standards at high level.

PUBLIC WORKS, TRANSPORTATION, AND COMMUNICATIONS

The rehabilitation of the major road and bridge projects undertaken jointly by our Government and the Government of the United States has been continued and pushed through with vigor during the year.

Ninety percent of the war-damaged water supply systems have been restored to operation. Construction of new waterworks projects, market buildings, bridges, municipal presidencias, and other public improvements financed from revolving loan funds or from loans extended by the Rehabilitation Finance Corporation, is continuing.

The investigation and survey of irrigation projects have been accelerated. Today eight new projects to water 78,500 hectares are awaiting construction. We completed the construction of 12 systems this past year, placing an additional 26,400 hectares under irrigation. Four projects furnishing water to another 15,100 hectares are under construction. When the Ambuklao outflow is harnessed, it will irrigate 48,000 hectares from Mt. Province to Central Luzon. The construction of flood control works in the Agno and the Pampanga river basins is proceeding apace.

We finished construction during the year of five administration, 138 school, four hospital, nine public health, and seven radio station war-damaged buildings, financed partly from U. S. war damage funds, and 47 administration, 212 school, 110 market, 51 general office, 22 hospital, 46 public health, and 90 other miscellaneous buildings financed exclu-

sively by our government. But the typhoons in the Visayas again wrought havoc, destroying even buildings completed last year, especially school houses.

Twenty national and five municipal ports and 29 lighthouses have been rehabilitated and placed in service. Dredging of the Port of Manila, including the esteros, and the Pasig River is now 40 percent completed. Dredging of the Ports of Iloilo and Pulupandan is nearing completion. Five seawall projects have been constructed and repaired. The Dewey Boulevard has been extended and filling is expected to be completed by May of this year.

Twelve additional post offices were opened. Regular airmail service to Israel and certain places in Palestine was resumed on May 5, 1951. Effective October 1, 1951, the twice-a-week airmail service to the United States was increased to six-times-a-week service. On January 1, 1951, the indemnity system of registration in 65 post offices located in chartered cities and provincial capitals was resumed.

Thirteen radio, seven telegraph, and 14 telephone stations and offices were established. Various telegraph and radio stations in strategic locations are open 24 hours to handle peace and order campaign messages. During the eruption of Mt. Hibok-Hibok, personnel of the Mambajao radio station stuck to their posts night and day. It was only when working in the vicinity was no longer possible that the station was moved to Mahinog where they kept the same vigil.

As a corollary of our aggressive program of increased production, we should adopt a more systematic and expanded transportation policy. Nothing can be considered produced until placed where needed for utilization. Progressive society is dependent upon transportation. It is time that, to derive maximum use of our meager resources, we established planned and coordinated programming of public expenditures intended for the provision of transportation facilities. Our government is committed to the maintenance of highways, bridges, port works, harbors, airfields, air and sea navigational aids. We should begin to explore the problems, possibilities, and potentials of a railway system in Mindanao, and provide for the extension of the existing system to Northern Luzon, especially in the Cagayan Valley.

OUR FOREIGN RELATIONS

I am happy to report to you that in specific, routine matters, our government has established most satisfactory relations with other governments and peoples, which will enhance not only our relations with them, but our economic well-being by fruitful and mutually beneficial contacts.

We have been able to secure to our people a pledge of unqualified assistance in maintaining our country's security and its integrity, by the one great power which is in a position to offer and fulfill such guarantees,—the United States of America.

Our relations with America remain what they have always been: relations of intimate and understanding alliance. Not just because America needs a base in the Far East, or because the Philippines needs the American market, but because fundamentally there is a bond of mutual ideal and aspiration between the Filipino and the American peoples that transcends the material factors of security and trade.

This ideal has motivated our relations with other free nations. Nor has it militated against our relations with our neighbors and our brothers in race in this region of the world. Rather, it has enhanced them. For, as our neighbors have gained their well-deserved independence and sovereignty, it is to the example of basic Philippine-American relations that they turn when they consider their departure from the colonial status.

The routinary aspects of our foreign affairs are well known to you. I shall, therefore, limit myself today in recommending to your serious consideration two important treaty proposals which will be placed before you.

One is the Philippine-American Mutual Defense Treaty. I feel there is no need of special advocacy of this treaty.

The other is the Japanese peace treaty, signed by us in San Francisco in September of last year.

I fully appreciate the reasons for the reluctance which many of you will entertain in considering this document. At this time, all I can say is that our signing of this document in San Francisco has not been done thoughtlessly, or on pressure, but on a sober appraisal of what is best for this Republic in the state in which the world finds itself today.

CONTINUED VIGILANCE

Gentlemen of the Congress: We can perhaps take pardonable pride in the substantial achievement that we have made in economic, financial and social stability, and in political security. However, in spite of the fact that the climate will probably continue to be favorable for further progress in these fields, I am compelled to say that we cannot relax in our efforts. It is still necessary for us to continue exercising the greatest discretion and vigilance.

There are external factors affecting our economic, social, and political stability over which we have little or no control at all. Let us not add to the problems that they will pose by allowing internal factors, over which we have control, to get out of hand.

Vigilance against threats to our internal and external security must be continued. Inflation must not be permitted resurgence. Our ability to keep it in check depends largely upon our determination to continue observing and strengthening the sound fiscal and monetary policies and practices we have promulgated these last three years.

No amount of outside assistance can place our economic development program on a continuing and self-generating basis. It is only our own resources that can serve as the prime mover of our development process.

Within our limits we must sustain our determined effort to push through without delay every project designed to achieve a more balanced economy for our country.

ECA aid is beginning to flow. When it does come in substantial amounts, we should be able to speed up our work.

We should take steps to bring about a review of the Trade Agreement with the United States, to suit changing exigencies consistent with a diversified and balanced economy.

Finally, the increasing vigilance against, and prosecution of, every form of corruption this administration has been waging these past years should suffer no abatement. The record of dismissals, prosecutions, and convictions the past five years must warn every public servant that public service is the highest form of stewardship requiring utmost integrity and strictest discipline. I have wanted, while

holding the Presidency, to inspire every man in the public service with pride in the organization to which he belongs, and every citizen with equal pride in his government. And may I say in addition that every public servant, whether in the national, provincial, city or municipal, or even the barrio, should remember that he is in the government to help the people and not to utilize his position to his personal benefit. (*Applause.*)

OUR CONTINUING RESPONSIBILITY

The world in which we live is a troubled, uncertain world. At no period in history have the masses of the world been better informed; yet at no period has there been greater groping, more searching, for a way to peace and to well-being.

In such a world it is with pride, yet with the humility which is our duty to Divine Providence, that we look on our own nation, and find in it the hope that is born of faith and nurtured in achievement.

When we consider that many other nations of the world are reeling under the impact of the world crisis, our country's position of over-all security is a matter of some gratification. But security—economic, internal and external—and the resultant political stability which we have achieved, are a continuing responsibility. No nation can long exist if content merely to maintain a state of security for the current generation, and oblivious of the challenge of its generations to come.

We cannot be complacent. We should bend every effort to make our country stronger, to insure as far as we are able the security of our children.

Nothing is permanent in human institutions except the struggle to maintain and improve them. I ask that you bear in mind this unending struggle along the road on which our people are marching towards their destiny. That destiny, under the guidance of Him who gave His people will and reason, may be shaped by us. But into the labor of shaping it must go not only the goodwill and the calm reason, but the unity of all the people, without which many may fall behind, many may be destroyed, and none may reach the shining goal. Thank you.

NEW ATMOSPHERE FOR NATIONAL UNITY

I therefore appeal to you again for national unity—unity that is not a temporary adjustment of differences, or a mere agreement to vote together on this or that issue.

It is something much deeper. It has its roots and its being in the spirit that moves a man to look to his neighbor as one whose well-being, whose future, is linked with his own. It is the deep-rooted sense that if my neighbor, my fellow-citizen, my brother Filipino comes to harm, I too am harmed; I too will sustain injury. My own children cannot grow and flourish to the nation's honor, if his children are denied the opportunity to grow and flourish.

This, gentlemen of the Congress, is what I understand by national unity. Not the expedient unity of the polls, but that unity which brings to us the recognition of common problems, common tasks, common honor, and the need for common struggle. It is unity to face and foil the dangers which continually arise to harass us as a people.

Whatever our political creeds, we must close ranks and lead our people to a new horizon, leaving behind us the doldrums of inaction, mutual suspicion, intrigues, and recrimination. Let us rise to the challenge of this critical hour and create for our country a new atmosphere, an atmosphere of faith, of courage, of cheerfulness, of determination, and thus inspire our people to greater efforts in our struggle for continued existence. Instead of passively crossing our arms in helplessness and frustration, let us as citizens of a country with such a heritage of fortitude and courage, arise as one to fight together to give our people a life of substance, of strength, of contentment. This is the call that we must heed. To do so is to show the patriotism, the new heroism that this epoch demands.

ANNEX TO THE MESSAGE

1. Special appropriation measures for immediate relief in typhoon disasters, and provision for more adequate relief in other calamities.

2. Revision, for purpose of clarification, of the Rice Tenancy Law.

3. Establishment of a Rural Credit System to provide credit facilities to small farmers and tenants.

4. Amendment to the law restricting the sale or lease of public lands to the landless or those who do not own more than 100 hectares, and providing cancellation of sales or leases to those who do not actually cultivate the land.

5. Extension of vocational training, including the creation of other colleges of the Muñoz type, and institutes of research on scientific methods of production of our staple commodities.

6. Further study of the minimum wage law to make it easier of enforcement and to make it more adaptable to local conditions, and corresponding revision of the Workmen's Compensation Law to make it conform to present exigencies.

7. More systematic construction of roads, bridges, and other means of transit, including railways, in regions of production and where industrial needs demand better facilities of communication.

8. More coordinated and effective investigations in administrative cases.

DECISIONS OF THE SUPREME COURT

[No. L-2042. August 31, 1950]

AURORA PANER, petitioner, *vs.* NICASIO YATCO, Judge of First Instance of Laguna, JOSEFA BATIBOT and EMITERIA MIRANDA, respondents.

MANDAMUS; APPROVAL OF RECORD ON APPEAL; WRIT DOES NOT ISSUE WHEN APPEAL IS NOT MERITORIOUS.—An order denying petition for relief to set aside a judgment may be appealable for which writ of mandamus may be granted to compel the trial court to approve the record on appeal, but when it is very evident as shown by the facts of the case that the granting of the writ would not profit the petitioner to obtain said remedy, for like a mirage it would merely raise false hopes and in the end avail the petitioner nothing, said petition for mandamus will be dismissed.

ORIGINAL ACTION in the Supreme Court. Mandamus.

The facts are stated in the opinion of the court.

Marcelino Lontok for petitioner.
Claro T. Almeda for respondent Batibot.

MONTEMAYOR, *J.:*

This is a petition for mandamus to compel the respondent Judge to approve the record on appeal filed in civil case No. 7685 of the Court of First Instance of Laguna. The facts necessary for an understanding and determination of this case are as follows:

On April 11, 1921, Emiteria Miranda, widow of Maximo Paner allegedly executed a deed of sale of one-half of lot No. 751 of the Calamba Estate Subdivision covered by transfer certificate of title No. 91 in the name of Maximo Paner in favor of Severo Batibot for the sum of ₱200. In September, 1947, the heirs of Severo Batibot filed in the Court of First Instance of Laguna civil case No. 86 which after reconstitution, was given number 7685 of the same Court, against Emiteria Miranda and her granddaughter Aurora Paner alleging that in March, 1943, the defendants, particularly Emiteria Miranda, deprived the plaintiffs of the possession and ownership of the lot in question causing damage in the sum of ₱50, and asking that plaintiffs be declared the owners of one-half of lot No. 751, and that they be paid the damage caused. Atty. Juan A. Baes, acting as counsel for the two defendants, filed an amended answer on September 3, 1947, alleging that the deed of sale above-mentioned was a forgery, and that defendant Emiteria Miranda had no knowledge of the execution thereof and that the mark therein affixed was not hers; that the original owner of the land in question was Maximo Paner, the deceased husband of Emiteria; that after his death he was succeeded by his

son Maximino Paner, father of defendant Aurora Paner; and that in February, 1945, Maximino Paner was massacred by the Japanese and he was succeeded by his only child Aurora Paner. The answer prayed for the dismissal of the complaint and for payment by the plaintiffs of the sum of ₱300 as damages.

On the same date that the answer was filed, Attorney Baes filed a motion in court alleging that defendant Aurora was only three years old, and at the same time asking the court to appoint her co-defendant grandmother Emiteria as her *guardian ad litem*. The case was heard on September 3 and 9, during which evidence was adduced by both parties—plaintiffs and defendants. On September 10th Emiteria took her oath as *guardian ad litem* of Aurora. On September 12th the trial court rendered its decision wherein it found that the deed of sale was genuine and had been duly executed by Emiteria Miranda. The court equally found that the land covered by the deed belonged to Maximo Paner who had bought it from the Bureau of Lands since July 1, 1910, before he married Emiteria Miranda, and that consequently, she had no right to sell the same as her property. The trial court declared the deed of sale null and void, but considering the good faith of the buyer Severo Batibot, the court sentenced the defendants to reimburse the purchase price of ₱200 to the plaintiffs with interest at 6 per cent per annum from the date of the deed, and further sentenced the defendants to compensate the plaintiffs for the value of the improvements introduced by them or their predecessor in interest.

On behalf of the defendants, Attorney Baes filed a motion for reconsideration and new trial, dated October 17, 1947, but his motion was denied for lack of merit. He did not appeal.

About two months later or rather on December 24, 1947, Attorney Marcelino Lontok, representing defendant Aurora Paner, filed a petition in the trial court asking that its decision of September 12, 1947, be set aside, as against his client Aurora Paner, or at least to permit her to file her appeal from said decision. The plaintiff opposed said petition and the trial court by order of January 8, 1948, denied the same on the ground that it was "not well-founded, and that the decision in this case has become final."

On January 21, 1948, Attorney Lontok filed his notice of appeal from the order denying his petition for reconsideration and prepared and submitted his record on appeal and the corresponding appeal bond. The trial court by order of February 9, 1948, refused to approve the record on appeal on the ground that it was filed beyond the reglementary period.

As already stated, to compel the respondent Judge to approve said record on appeal, the present petition for mandamus was filed in this Court.

In refusing to approve the record on appeal, the respondent Judge seems to have labored under the impression that the appellant and herein petitioner was appealing from the court's decision of September 12, 1947, this, judging from the ground or reason given for the refusal, namely, that the record on appeal was filed beyond the reglementary period. But in reality the appeal was being taken from the order of January 8, 1948, denying the petition to set aside the decision of September 12, 1947, a petition presumably based on section 2, Rule 38 of the Rules of Court. That order of denial was, of course, appealable and if the record on appeal was otherwise proper and complete, the respondent Judge was bound to approve it and he may be compelled to do so by a writ of mandamus. So, strictly and legally speaking, the present petition for mandamus may be granted. However, before acting upon the petition, we may inquire into the facts involved in order to determine whether once the writ of mandamus is granted and the case is brought up here on appeal, the appellant has any chance, even possibility of having the basic decision of the trial court of September 12, 1947, set aside or modified; for if the appellant has not that prospect or likelihood, then the granting of this writ of mandamus and the consequent appeal would be futile and would mean only a waste of time to the parties and to this Court. This inquiry can easily be made from a copy of the record on appeal now before us as well as the pleadings filed by both parties.

The whole theory of counsel for the petitioner in insisting in setting aside the judgment of September 12, 1947, against his client, the minor Aurora Paner, is that the court acquired no jurisdiction over her person at least during the trial. He contends that inasmuch as the child's grandmother and *guardian ad litem* did not take her oath as such guardian until September 10, 1947, that is, after the hearing of the case which was held on September 3 and 9, during said hearings, the minor was not duly represented and the court acquired no jurisdiction over her. Furthermore, said counsel contends that her *guardian ad litem* had interest in the case adverse to that of her ward which accounts for said guardian failing or refusing to appeal from the decision.

The contention of counsel as regards jurisdiction is based on a mere technicality. The record fails to show the day when the court appointed the grandmother Emiteria Miranda as *guardian ad litem* of her granddaughter but in the absence of evidence on this point, it is reasonable

to presume that the appointment must have been made on the very day that the court was asked to do so, namely, on September 3, 1947, the first day of the hearing. It is reasonable to presume that the respondent realized the importance and necessity of having a minor party to a case duly represented in court during its judicial proceedings, and that he must have made the appointment perhaps verbally before commencing the hearing.

During the hearings held on September 3 and 9, 1947, the attorney for the defendants Emiteria and her ward Aurora presented evidence calculated to prove that the lot claimed by the plaintiffs was never sold to them, evidence which can in no manner be regarded as contrary to the interests of Aurora Paner. On the contrary, it was designed to keep whole and preserve Aurora's title to the property in litigation.

Counsel for petitioner claims that Emiteria did not take her oath as *guardian ad litem* until September 10, 1947, that is, one day after the last day of the hearing. In the absence of any denial by respondents of this claim, we shall assume it to be true. But even then, as long as during the court proceedings, Emiteria had acted as such guardian to represent her ward and protect her interests, her belated taking of oath did not in any way adversely affect or prejudice the interests of the minor. After all, the oath-taking was a mere formality.

It should be remembered that when the decision was rendered on September 12, 1947, the grandmother Emiteria Miranda, had already taken her oath as *guardian ad litem* and she was fully authorized to appeal from the decision. In fact, through counsel said guardian and her ward filed a motion for reconsideration and new trial but when that motion was denied they did not appeal. The reason for said failure to appeal is found in a letter written at the time by the defendants' counsel to the lawyer of the plaintiffs which quoted in part reads as follows:

> "I did not appeal the case because I believe that in doing so, the parties will incur more expenses than the actual price of the land in litigation."

And, we are inclined to agree with the said counsel that considering the amount involved in the decision, it was really wiser to abide by said decision instead of taking an appeal, and paying the necessary court and attorney's fees, with no definite guaranty or assurance of winning the case in the end.

As to the alleged conflict in interests between the guardian and her ward, we fail to see said divergence. We should bear in mind that the guardian was no stranger to but a grandmother of the ward. In her answer to the complaint in the trial court, said guardian far from claim-

ing the lot in question as her own, said that it belonged to her ward as an inheritance from her grandfather, deceased husband of the guardian. In fact, in order to protect and conserve the property so that it may go to her granddaughter and ward, whole and unburdened, the grandmother and guardian went to the extent of disclaiming and denying any previous alienation or conveyance of said property to the plaintiffs. All this fails to show any conflict of interests between guardian and ward.

Now, coming to the petition filed in the trial court on December 24, 1947, to set aside the decision of September 12, 1947, although it was presumably filed under the provisions of Rule 38 of the Rules of Court, said petition made no mention whatsoever of said Rule and what is more important, it failed to allege any of the grounds on which a petition for relief is usually based, namely, fraud, accident, mistake, or excusable negligence. As a matter of fact, after examining the record we are unable to find that any of these grounds existed or could be successfully invoked by the minor, and may be that was the reason why they were not alleged in the petition. And, if the case were taken to this Court on appeal and we were to examine the facts of the case from the record on appeal as we have done now, we do not see how the decision of the trial court of September 12, 1947, even assuming it to be erroneous as not altogether in conformity with the law and evidence, can be set aside. From all this it is not difficult to imagine and believe that the trial court was not without reason in refusing to set aside its decision of September 12, 1947, and that it would not profit the petitioner to obtain the remedy of mandamus now sought, for like a mirage it would merely raise false hopes and in the end avail her nothing.

In view of the foregoing, the petition for mandamus is hereby dismissed without pronouncement as to costs. So ordered.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Tuason, and *Reyes, JJ.*, concur.

Petition dismissed.

[No. L-2134. Septiembre 1, 1950]

JUAN C. GEQUILLANA, demandante y apelado, *contra* FELIPE BUENAVENTURA, demandado y apelante

1. APELACIÓN; ORDEN DE REBELDÍA ES INAPELABLE.—La orden de rebeldía es interlocutoria, no final, y, por tanto, inapelable. El artículo 2, Regla 41 dice que "Ningún fallo u orden interlucotoria o incidental suspenderá el curso de un juicio ni será objeto de apelación hasta que se dicte sentencia u orden definitiva a favor de una u otra parte."

2. ENTREGA LEGAL DE CITACIÓN; DEMANDADO DECLARADO EN REBELDÍA, DERECHO DEL.—El demandado declarado en rebeldía "pierde su cualidad de parte ante el Juzgado, y no tiene derecho a que se le haga las notificaciones en el asunto, ni a comparecer de ninguna manera en el."
3. SENTENCIA DE REBELDÍA; NOTIFICACIONES; REMEDIO DEL DEMANDADO BAJO LA REGLA 38.—Lo que el demandado debió haber hecho fué pedir la revocación de la orden de rebeldía por medio del recurso que concede la Regla 38 para no ser privado del derecho de ser notificado de todas las actuaciones posteriores y de apelar en el caso de que fuere necesario, después de dictada la sentencia definitiva en el fondo.

APELACIÓN contra un auto del Juzgado de Primera Instancia de Negros Occidental. Enriquez, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Parreño, Parreño, Flores y Carreon en representación del apelante.

D. Emiliano A. Tejada en representación del apelado.

PABLO, *M.:*

Contra la demanda incoada en el Juzgado de paz de Ilog, Negros Oriental, el demandado presentó una contestación escrita y firmada por sus abogados Parreño & Parreño. Después de la vista correspondiente, el Juez de Paz sobreseyó la demanda y el demandante apeló por medio de su abogado Sr. Emiliano A. Tejada.

Registrada la causa en el Juzgado de primera instancia, el escribano envió en 20 de noviembre de 1947 una notificación al demandado Felipe Buenaventura, dándole cuenta de que la causa fué registrada en apelación el 18 de noviembre de 1947 de acuerdo con las disposiciones del artículo 7, Regla 40.

En 31 de diciembre del mismo año, el abogado del demandante presentó una moción pidiendo que el demandado fuese declarado en rebeldía por no haber presentado su contestación dentro del plazo reglamentario, y en 3 de enero de 1948, los abogados del demandado se opusieron a la moción y presentaron su contestación reproduciendo la que habían presentado en el Juzgado de Paz. El Juzgado, desestimando la oposición, dictó la orden de 26 de enero de 1948 declarando en rebeldía al demandado. Contra esta orden el demandado apeló.

La apelación es prematura. La orden de rebeldía es interlocutoria, no final, y, por tanto, inapelable. El artículo 2, Regla 41 dice que "Ningún fallo u orden interlocutoria o incidental suspenderá el curso de un juicio ni será objeto de apelación hasta que se dicte sentencia u orden definitiva á favor de una u otra parte." (Sitchon *contra* Sheriff, Negros Occidental y Luzon Surety Co., Inc., 45 Off. Gaz., [No. 9, Supp.], 25.)

El demandado declarado en rebeldía "pierde su calidad de parte ante el Juzgado, y no tiene derecho a que se le haga las notificaciones en el asunto, ni a comparecer de ninguna manera en él." (Vélez *contra* Ramas, 40 Jur. Fil., 829, 834.)

Lo que el demandado debió haber hecho fué pedir la revocación de la orden de rebeldía por medio del recurso que concede la Regla 38 para no ser privado del derecho de ser notificado de todas las actuaciones posteriores y de apelar en el caso de que fuere necesario, después de dictada la sentencia definitiva en el fondo. (Lim Toco *contra* Go Fay, 45 Off. Gaz., 3350.)

Se sobresee la apelación. El apelante pagará las costas.

Moran, Pres., Ozaeta, Parás, Bengzon, Tuason, Montemayor y *Reyes, MM.*, están conformes.

Se sobresee la apelación.

[No. L-2180. September 1, 1950]

In re petition for the issuance of new title. JUAN P. PELLICER & CO., INC., and RUFINA GUECO, petitioners and appellees, *vs.* PHILIPPINES REALTY CORPORATION, oppositor and appellant.

"LIS PENDENS"; ITS EFFECTS ON FUTURE TRANSACTIONS AFTER ENTRY ON THE PROPERTY IN LITIGATION.—With the pending suit and entry of *lis pendens*, any cancellation or issuance of title of the land involved as well as any subsequent transactions affecting the same, would have to be subject to the outcome of the litigation. In other words, until the litigation is terminated there is no risk of losing the property or any part of it as a result of any conveyance of the land or any encumbrance that may be made thereon posterior to the filing of the notice of *lis pendens*. That a land registration court may not over the objection of one of the parties, in a proceeding for the cancellation of a certificate of title and the issuance of another, determine the relative rights of the parties to the property, is probably right. But the court refrained from passing on the question because these rights are the subject of a separate litigation.

APPEAL from an order of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

La O & Feria for appellant.

Ramirez & Ortigas for appellee Juan P. Pellicer & Co., Inc.

Jose P. Fausto for appellee Rufina Gueco.

TUASON, *J.:*

This is an appeal from an order of the Court of First Instance of Manila, Branch IV, in cadastral case No. 55, G. L. R. O. record No. 275. The order was issued upon

the petitions and under the circumstances to be presently stated, which are quite involved.

The Orden de PP. Benedictinos de Filipinas, hereafter called Benedictine Fathers for short, owned a parcel of land in the District of San Miguel, Manila, covered by certificate of title No. 22560. Adjoining this parcel is one owned by the Philippine Realty Corporation having an area of 8,151 square meters and covered by transfer certificate of title No. 43851.

On April 22, 1944, the Philippine Realty Corporation and the Benedictine Fathers entered into a contract wherein, among other provisions, this clause was inserted:

"And, inasmuch as the specific purpose of the sale of the two (2) parcels of land herein before described is as stated in the third whereas hereof, that said two parcels of land may be incorporated to and made a part of the San Beda Subdivision as shown in Annex A hereof, so as to facilitate the sale of the whole subdivision, as a whole, by the vendees, to a third party or parties, it is further agreed and stipulated by and between the vendor and the vendees that if said vendees shall fail to close a *contract for the sale of the whole of the San Beda Subdivision* within the term of 60 days from the date of the signing of this deed, then this sale shall become null and void and the title to the property hereby sold shall *ipso facto* devolve upon the vendor and the vendees shall become divested of all rights to the property hereunder except the right to be reimbursed of the value of the improvement made therein and hereinbefore referred to. *But should the vendees find a purchaser or purchasers and close a contract for the sale of said San Beda Subdivision within the time herein specified, their title to the property hereby sold shall become fully vested and uncontestable under the present instrument.*"

On June 6, 1944, well within the period provided in the stipulation, the Benedictine Fathers closed a contract to sell the entire subdivision embracing parts or the totality of the two tracts to Juan Pellicer and Co., Inc., and on June 30 the same was made definite in another instrument. Both documents were inscribed in the office of the register of deeds.

On August 6, 1944, Pellicer and Co. conveyed to Antonio S. Gabriel two subdivision lots, both of which are included in the Philippine Realty's land, and on July 8, 1946, Gabriel resold them to Rufina Gueco. Both these sales were likewise properly registered in the office of the register of deeds.

Meanwhile, on June 7, 1944, on petition of Attorney A. Opisso in behalf of Pellicer & Co., Judge G. Diaz issued to the register of deeds an order of the following tenor: (1) To cancel Philippine Realty's transfer certificate of title No. 43851 and to issue in lieu thereof in favor of the same registered owner a new one covering not all but certain specified portions of the land described in the title; (2) to cancel the Benedictine Fathers' transfer certificate of title No. 22560 and to issue in lieu thereof in

favor of the same registered owner a new one also covering only certain specified portions of the land described in the title; and (3) to issue a new certificate of title in favor of La Orden de PP. Benedictinos de Filipinas covering certain specified portions of consolidation and subdivision plan pcs–1002.

On November 26, 1946, upon the application of Attorneys Joaquin & Fineza for Pellicer & Co., and with the conformity of the attorneys for the Philippine Realty Corporation, Judge De la Rosa, then presiding over branch IV of the court of first instance, directed the register of deeds to issue a new duplicate certificate of title in substitution for Philippine Realty's No. 43851, which had been destroyed, "con instrucciones de retenerlo en su poder hasta nueva orden de este tribunal."

Matters stood thus when, on November 28, 1946, and on January 17, 1947, Rufina Gueco and Pellicer & Co. filed separate petitions. Rufina Gueco asked (1) for the cancellation of the Philippine Realty's certificate of title No. 43851 and the issuance of another in its stead in the name of the Benedictine Fathers; (2) for the cancellation of the latter certificate and the issuance of a new one to Pellicer & Co.; and (3) for the cancellation of Pellicer & Co.'s certificate and the issuance in its place of another in conformity with consolidation and subdivision plan pcs.–1002. Further, it was requested that upon these cancellations and the registration of the subdivision in the name of Pellicer & Co. the register of deeds be ordered to give course to the deeds of sale executed successively by Pellicer & Co. in favor of Antonio S. Gabriel and by Gabriel in favor of Rufina Gueco, both of which had been filed with the register of deeds' office. On his part, Pellicer & Co. sought an order to supplement Judge De la Rosa's order of November 20, 1946, so as to cause the register of deeds to issue a certificate of title to the Benedictine Fathers on the whole property embraced in consolidation and subdivision plan pcs–1002 to the end that such title might in turn be transferred to and recorded in the name of Pellicer & Co. by virtue of the deed of absolute sale of June 30, 1944, executed in Pellicer & Co.'s favor by the Benedictine Fathers.

On March 12, 1947, Judge De Leon, presiding over branch IV, made the following order:

"Por las consideraciones expuestas y declarando este Tribunal con jurisdicción para conocer de las citadas peticiones, se deniega la oposición y previa presentación de la copia de la orden de fecha 7 de Junio de 1944, Exhíbit C juntamente con el Exh. A y el plano Pcs–1002, Exh. D y sus descripciones técnicas, Exhs. D–1 al D–82 y de los mencionados Exhs. B, E. F y G, y con el duplicado del certificado de transferencia de título No. 43851, expedido de acuerdo con la orden de este juzgado de fecha 20 de Noviembre de 1946, proceda a la inscripción de los documentos objeto de los

Asientos de Presentación Nos. 19404, 19414 y 21812, así como de la escritura de venta de fecha 30 de Agosto de 1946, otorgada por Juan P. Pellicer Co., Inc., a favor de Antonio S. Gabriel y de la escritura de venta otorgada por este a favor de Rufina Gueco, expidiendo los títulos correspondientes y haciendo constar la parte pertinente de los Directivos del Secretario de Justicia, previo el pago de todos los honorarios legales."

Judge De Leon found from the evidence and ruled that the consummation of the sale to the Benedictine Fathers was made to depend exclusively on the fulfillment of the condition set forth in the contract of sale and that this condition had been complied with.

The Philippine Realty Corporation opposed Rufina Gueco's and Pellicer & Co.'s petitions, the chief objection being that the Benedictine Fathers had failed to pay the purchase price for the opponent's land by reason of which, according to Philippine Realty, the contract of sale had not been consummated and title had not been conveyed. And it was contended in the court below, and it is contended on appeal, that this objection by its nature was outside the jurisdiction of the land registration court to decide in a land registration proceeding.

This contention is probably right. But it is unnecessary to discuss whether Judge De Leon committed a mistake in passing, over the objection of Philippine Realty, upon the construction of the contract between the Philippine Realty and the Benedictine Fathers, upon the question whether the terms thereof had been fulfilled, and other matters going to the relative rights of the parties to the property. We say unnecessary because, if for nothing else, these very rights are being litigated in a regular action at law in another branch of the same court.

It appears that Philippine Realty on February 24, 1947, after Judge De Leon's order was issued, commenced a suit against the Benedictine Fathers and Pellicer & Co. for annulment and resolution of the sale contract, an action which is now pending trial, and that proper notice of *lis pendens* was entered in the register of deeds' office. Rufina Gueco, it is evident, is a necessary party to that action, and if she has not done so, she should be compelled to join therein.

With the pending suit and entry of *lis pendens,* the cancellation of the Philippine Realty's title and the issuance of new titles to Pellicer & Co. and to Rufina Gueco, as well as any subsequent transactions affecting the Philippine Realty's land, would have to be subject to the outcome of the current litigation. In other words, until that litigation is terminated and unless the Philippine Realty's action fails, Pellicer and Gueco and those who may derive title from them could not make valid use of their certificates. Concommitant with the inhibition on Pellicer and Gueco to alienate or encumber the land is the guarantee

that the Philippine Realty will not run any risk of losing its property or any part of it as a result of any conveyance of the land or any encumbrance that may be made thereon posterior to the filing of the notice of *lis pendens*.

If no other factors entered into the case, we might dismiss the appeal or hold it in abeyance interim the pendency of the suit over the validity and effectiveness of the sale by the Philippine Realty to the Benedictine Fathers. But the Philippine Realty's land is not the only tract affected by the challenged order. The order comprises the Benedictine Fathers' land as well as Philippine Realty's and, as has been seen, both parcels have been combined in one plan and form the present San Beda subdivision. Unless then the instant appeal is decided and the order of Judge De Leon allowed to stand, the development and sales of the Benedictine Fathers' land, the title to which is not in controversy, would be held up. From this point of view we believe that the appealed order should be maintained with a modification. We believe that affirmance of this order with adequate safeguards will best serve the interest of all concerned, in that while a qualified affirmance will not prejudice the rights and interests of the Philippine Realty, the issuance of a new certificate of title to the entire subdivision would lift the impediment to transactions on that portion of the subdivision with which the Philippine Realty is not concerned.

If it be contended that the consolidation and subdivision plan should be unmade and the original titles to the parcels that have been merged restored to their *status quo ante,* the answer is that, granting the feasibility of this step, it is to be seriously doubted whether in the present state of uncertainty as to the final outcome of the pending action, such course would be advisable in view of the fact that by Judge Diaz's order of June 7, 1944, the original certificates of title of both parties have been cancelled and a new title covering both parcels or portions of them has been issued or recorded. Under these circumstances a return to the *status quo ante* would prove a waste of time, effort and money in the event the sale of the Philippine Realty's land to the Benedictine Fathers should be found to have been consummated or perfected. In addition to these observations, there appears a sincere desire, and efforts are being exerted by the parties—especially the Archbishop of Manila, who owns a controlling stock in the Philippine Realty Corporation, and the Benedictine Fathers—to come to an amicable settlement.

For all the foregoing reasons, the order complained of will be affirmed, with the distinct understanding that the findings of law and fact in that order relative to the nature of the contract of sale between Philippine Realty

and La Orden de PP. Benedictinos de Filipinas and the question of due compliance with its terms will be disregarded and, specifically, will not prejudice those questions and other issues that may be raised in the law suit now pending hearing in another branch of the Manila Court of First Instance.

There will be no special findings as to costs of this appeal.

Ozaeta, Parás, Pablo, Bengzon, Montemayor, and *Reyes, JJ.,* concur.

Order affirmed.

[No. L-1415. Septiembre 13, 1950]

EL PUEBLO DE FILIPINAS, demandante y apelante, *contra* MAMERTO CORTEZ Y OTRO, acusados. JUSTO GARCIA, ELENO AGUILAR y LORENZO TORRES, fiadores y apelados.

FIANZA; VALIDEZ DE LA FIANZA; LA NULIDAD DE LA FIANZA DEBE SER REVELADA INMEDIATAMENTE AL JUZGADO.—Las pruebas presentadas en el sentido de que los fiadores firmaron sus fianzas en sus respectivas casas porque fueron amenazados con revólver no merecen seria consideración por ser incompatibles con su conducta en las varias transferencias de vista de la causa y en sus mociones pidiendo plazo para presentar ante el Juzgado la persona del acusado. Si fuese verdad que mediante amenazas firmaron las fianzas, lo hubieran revelado inmediatamente al Juzgado después de que hubo desaperecido la amenaza. Nunca lo han hecho. En cambio dejaron pasar bastante tiempo antes de hacerlo. Sólo cuando ya no podían presentar la persona del acusado ante el Juzgado fué cuando los fiadores pidieron que fuesen declaradas nulas las fianzas otorgadas por ellos.

APELACIÓN contra un auto del Juzgado de Primera Instancia de Pampanga. Bautista, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

El Procurador General Auxiliar Sr. Ruperto Kapunan, Jr., y *el Procurador Sr. Luis R. Feria* en representación del apelante.

Srta. Carmen Buyson en representación de los apelados.

PABLO, *M.:*

En 16 de octubre de 1945 el fiscal provincial de Pampanga presentó querella por el delito de asesinato contra Mamerto S. Cortez alias Berting, un tal Valentino y otro de nombre desconocido. En 7 de diciembre de 1945 Mamerto S. Cortez presentó una moción pidiendo se le permitiera prestar fianza para su libertad provisional, y el Juzgado fijó la fianza en ₱15,000. En 4 de enero de 1946 se prestó una fianza de ₱15,000, constituyendo varios documentos, por Urbano D. Dizon, Antonio Inzacruz, Lo-

renzo Torres, Antonio Umali, Eleno Aguilar, Justo García, y Florencio Miranda. Justo García declara en el documento firmado por él que posee bienes por valor de ₱2,550 (Exhíbit A), Eleno Aguilar, ₱2,330 (Exhíbit B), y Lorenzo Torres, ₱3,070 (Exhíbit C). En 2 de abril de 1946, el acusado fué informado de la querella, y él se declaró no culpable. En 19 de septiembre de 1946, por incomparecencia del acusado, se aplazó la vista de la causa para el 26 del mismo mes, después para el 8 de octubre, y después para el 29 del mismo mes, y se requirió a los fiadores que notificaran al acusado de dicha vista.

En 29 de octubre de 1946 la Srta. Carmen Buyson, como abogada de los fiadores Eleno Aguilar, Justo García y Lorenzo Torres, compareció ante el Juzgado para pedir que la vista de la causa se difiriera para dar a sus clientes oportunidad de encontrar al acusado cuyo, paradero se ignoraba, y hacerle comparecer ante el Juzgado. A esta petición el fiscal especial, Sr. Filemón Cajator, no opuso objeción, pero pidió la confiscación de la fianza. El Juzgado dictó una orden el 29 de octubre decretando la confiscación de la fianza prestada para la libertad provisional del acusado Mamerto S. Cortez, concediendo 30 días a los fiadores para hacer comparecer la persona del acusado y explicar por qué no debía dictarse sentencia contra ellos por la cantidad de la fianza prestada.

En 20 de noviembre de 1946, los fiadores Justo García, Eleno Aguilar y Lorenzo Torres presentaron personalmente una moción pidiendo se les concediese otro plazo de 60 días después de los 30 días ya concedidos. En 27 de noviembre de 1946 se concedió a los fiadores otro plazo de 30 días—en vez de 60—comenzando dicho segundo plazo desde el 29 del mismo mes de noviembre.

En 16 de diciembre de 1946, los fiadores Justo García, Lorenzo Torres y Eleno Aguilar presentaron personalmente una moción pidiendo la cancelación de la fianza prestada por ellos a favor del acusado. La vista de la moción se señaló para el 28 de diciembre, después para el 14 de febrero de 1947, ultimamente para el 3 de marzo de 1947. En 21 de marzo del mismo año, después de oir a los testigos de ambas partes, el Juzgado declaró nulas *ab initio* las fianzas prestadas por Justo García, Eleno Aguilar y Lorenzo Torres (Exhíbits A, B y C) por haber sido firmadas a punta de revólver. Después de desestimada la moción de reconsideración, el fiscal provincial apeló contra esta orden.

Las pruebas presentadas en el sentido de que Justo García, Eleno Aguilar y Lorenzo Torres firmaron sus fianzas en sus respectivas casas porque fueron amenazados con revólver no merecen seria consideración por ser incompatibles con su conducta en las varias transferencias

de vista de la causa y en sus mociones pidiendo plazo, primero de 30 días y después de 60, para presentar ante el Juzgado la persona del acusado. Si fuese verdad que mediante amenazas firmaron las fianzas, lo hubieran revelado inmediatamente al Juzgado después de que hubo desaparecido la amenaza. Nunca lo han hecho. En cambio dejaron pasar bastante tiempo antes de hacerlo. Sólo cuando ya no podían presentar la persona del acusado ante el Juzgado fué cuando los fiadores pidieron que fuesen declaradas nulas las fianzas otorgadas por ellos.

Aun suponiendo por un momento que en realidad hayan sido amenazados, las sucesivas mociones pidiendo plazo para presentar la persona del acusado, primero por medio de una abogada y después por ellos mismos han convalidado la fianza. Ellos reconocieron su obligación bajo los términos precisos de las fianzas Exhíbits A, B y C de responder ante el Tribunal por la comparecencia del acusado. Aquí se trata, por lo tanto, de una confirmación indiscutible. El artículo 1309 del Código Civil dispone que "La moción de nulidad queda extinguida desde el momento en que el contrato haya sido confirmado válidamente." El artículo 1311 dice que "La confirmación puede hacerse expresa o tácitamente. Se entenderá que hay confirmación tácita cuando, con conocimiento de la causa de nulidad y habiendo ésta cesado, el que tuviese derecho a invocarla ejecutase un acto que implique necesariamente la voluntad de renunciarlo." El derecho de pedir la nulidad de la fianza es renunciable. No hay ley que lo prohibe. Y el artículo 1313 claramente dispone que "La confirmación purifica al contrato de los vicios de que adoleciera desde el momento de su celebración."

"La cosa que fué viciosa en su principio, adquiere fuerza por el transcurso del tiempo, si el impedimento cesa y sobreviene una nueva causa que confirme el acto." (9 Enciclopedia Jurídica Española 465.)

"Esta purificación del contrato que dice el artículo 1,313, refuerza y acentúa el alcance de la confirmación, borrando, como si nunca hubieran existido, los vicios del contrato, sancionando la legitimidad del cumplimiento que a éste se le hubiera dado, y de las determinaciones que hubiesen tomado ya las partes sobre aquellas cosas que a virtud del contrato hubiesen recibido o tuvieran derecho a recibir." (8 Manresa, 4.ª ed., 734.)

Se revoca el auto declarando nulas las fianzas Exhíbits A, B y C, con costas contra los apelados.

Moran, Pres., Ozaeta, Parás, Bengzon, Tuason, Montemayor y *Reyes, MM.*, están conformes.

Se revoca el auto.

[No. L-2684. September 14, 1950]

GENERAL CORPORATION OF THE PHILIPPINES and MAYON INVESTMENT CO., plaintiffs and appellees, *vs.* UNION INSURANCE SOCIETY OF CANTON, LTD. and/or FIREMAN'S FUND INSURANCE CO., defendants and appellants.

1. CORPORATION; FOREIGN CORPORATION DOING BUSINESS WITH OR WITHOUT LICENSE AMENABLE TO PROCESS OF LOCAL COURTS.—A foreign corporation actually doing business in this jurisdiction, with or without license or authority to do so, is amenable to process and the jurisdiction of local courts.
2. ID.; FOREIGN CORPORATION WITH A LICENSE TO DO BUSINESS; SERVICE OF SUMMONS.—If such foreign corporation has a license to do business, then summons to it will be served on the agent designated by it for the purpose, or otherwise in accordance with the provisions of the Corporation Law.
3. ID.; FOREIGN CORPORATION DOING BUSINESS WITHOUT LICENSE AND DESIGNATED AGENT; SERVICE OF SUMMONS.—Where such foreign corporation actually doing business here has not applied for license to do so and has not designated an agent to receive summons, then service of summons on it will be made pursuant to the provisions of the Rules of Court, particularly Rule 7, section 14 thereof.
4. ID.; FOREIGN CORPORATION WHEN REGARDED AS DOING BUSINESS HERE.—Where a foreign insurance corporation engages in regular marine insurance business here by issuing marine insurance policies abroad to cover foreign shipments to the Philippines, said policies being made payable here, and said insurance company appoints and keeps an agent here to receive and settle claims flowing from said policies, then said foreign corporation will be regarded as doing business here in contemplation of law.

APPEAL from a judgment of the Court of First Instance of Manila. Natividad, J.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda and *Martin B. Laurea* for appellant Fireman's Fund Insurance Co.

Nabong & Sese for appellees.

MONTEMAYOR, *J.:*

General Corporation of the Philippines and the Mayon Investment Co. are domestic corporations duly organized and existing by virtue of the laws of the Philippines, with principal offices in the City of Manila. The Union Insurance Society of Canton, Ltd. is a foreign insurance corporation, duly authorized to do business in the Philippines, with head office in the City of Hongkong, China, and a branch office in Manila. The Fireman's Fund Insurance Co. is a foreign insurance corporation duly organized and existing under the laws of the State of California, U. S. A. It has been duly registered with the Insurance Commissioner of the Bureau of Commerce as such insurance company since November 7, 1946, and

authorized to do business in the Philippines since that date.

The Union Insurance Society of Canton, Ltd. has been acting as settling agent of and settling insurance claims against the Fireman's Fund Insurance Co. even before the last world war and continued as such at least up to November 7, 1946.

In civil case No. 511 of the Court of First Instance of Manila, the General Corporation of the Philippines and the Mayon Investment Co. as plaintiffs sued the Union Insurance Society of Canton, Ltd. and the Fireman's Fund Insurance Co. for the payment of twelve marine insurance policies in the sum of ₱57,137.60. Said policies were issued by the Fireman's Fund Insurance Co. for merchandise shipped from the United States to the Philippines in 1945, in the name of Western Canvas Products Company and/or Rovan Trading Company, doing business in Seattle, Washington, U. S. A. The original bills of lading and the original insurance policies covering the merchandise, all indorsed in blank, were sent by the insured to the Hongkong & Shanghai Banking Corporation in Manila with instructions that the said documents were to be surrendered and title to the merchandise covered by them to be transferred upon payment in full of the invoice price.

Upon arrival of the merchandise in Manila the consignee or purchaser would appear to have failed to meet the terms of the sale and following a certain agreement between the shippers and the herein plaintiffs, the shipping papers, including the twelve marine insurance policies were surrendered to the herein plaintiffs and the merchandise released to them, the latter claiming that they had paid to the bank the full invoice price. It was later found that some of the merchandise were lost and others damaged while in transit and inasmuch as the policies were made payable to the order of the assured in Manila, the plaintiffs filed the corresponding claims with the defendant Union Insurance Society of Canton, Ltd. in Manila acting as settling agent of its co-defendant Fireman's Fund Insurance Co. It seems that all the claim papers with the exception of insurance policy No. 70448/6 (Exhibit E–2) for $2,902.36 were forwarded to defendant Fireman's Fund Insurance Co. at Seattle, Washington, following instructions from the said company, and the claims there approved by the insurance company. However, the claims were there adjudicated by the Superior Court of the State of Washington for King County against the plaintiffs in the present case and in favor of other claimants. As regards the claim based on insurance policy No. 70448/6, Exhibit E–2, involved in the present appeal, inasmuch as it was filed a little late, it was not forwarded

to the United States and so was never passed upon by the Fireman's Fund Insurance Co. at Seattle; neither was it approved or disapproved by the Union Insurance Society of Canton, Ltd. in Manila.

In the trial court the parties submitted the case upon a partial stipulation of facts and some evidence, oral and documentary. After hearing, said court found and held that as regards the eleven marine insurance policies which have been the subject of interpleader in the Superior Court in the State of Washington for King County and decided by said court against the herein plaintiffs, said decision constituted *res adjudicata* binding upon the plaintiffs herein. The trial court absolved the defendant Union Insurance Society of Canton, Ltd. from the complaint but condemned the Fireman's Fund Insurance Co. to pay the plaintiffs the sum of $2,000 or its equivalent in Philippine currency, with legal interest from and including September 12, 1946, on the claim based on the marine insurance policy No. 70448/6, Exhibit E–2.

The plaintiffs General Corporation of the Philippines and Mayon Investment Co. appealed from that part of the decision referring to the eleven marine insurance policies. Said appeal is now docketed in the Supreme Court as G. R. No. L–2303. The Fireman's Fund Insurance Co. appealed from the decision in so far as it was sentenced to pay $2,000 to the plaintiffs. Because of the amount involved the appeal was sent to the Court of Appeals. However, being a companion case of G. R. No. L–2303, at the instance of appellant, the case was finally elevated to the Supreme Court which gave it due course by its resolution of December 9, 1948, and docketed here as G. R. No. L–2684. This is the case on appeal now under consideration.

The appellant contends that the trial court erred in holding that it acquired jurisdiction over appellant Fireman's Fund Insurance Co. and in rendering judgment against it in the sum of $2,000.

As regards the issue of jurisdiction, it is well to state that the summons corresponding to appellant Fireman's Fund Insurance Co. was served on September 12, 1946, on the Union Insurance Society of Canton, Ltd. then acting as appellant's settling agent in this country. At that time, the appellant had not yet been registered and authorized to do business in the Philippines. Said registration and authority came as already stated, only on November 7, 1946, that is, a little less than two months later.

The attorneys for the Union Insurance Society of Canton, Ltd. on September 25, 1946, petitioned the trial court to quash and declare null and void the summons issued thru it on its co-defendant Fireman's Fund Insurance Co. on the ground that the said company was not doing business

in the Philippines, and that the Union Insurance Society of Canton, Ltd. had no authority from its co-defendant to receive summons on its behalf. The trial court in its order of October 18, 1946, overruled said petition on the ground that according to the complaint, the Fireman's Fund Insurance Co. was doing business in the Philippines and a mere denial of said allegation was not sufficient to justify the court in quashing the summons, and that the matter of doing business in the Philippines was a question of fact to be determined at the hearing of the case.

Section 14, Rule 7 of the Rules of Court reads as follows:

"SEC. 14. *Service upon private foreign corporations.*—If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers *or agents within the Philippines.*"

Applying the above legal provision, the trial court in its decision held that service of summons for appellant Fireman's Fund Insurance Co. on its settling agent Union Insurance Society of Canton, Ltd., was legal and gave the court jurisdiction over said appellant, the court ruling that the phrase "or agents within the Philippines" clearly embraced settling agents like the Union Insurance Society of Canton, Ltd.

We agree with the trial court in its ruling on this point. Section 14, Rule 7 of the Rules of Court above-quoted in employing the phrase "doing business in the Philippines" makes no distinction as to whether said business was being done or engaged in legally with the corresponding authority and license of the Government or, perhaps illegally, without the benefit of any such authority or license. As long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts, this for the protection of the citizens, and service upon any agent of said foreign corporation constitutes personal service upon the corporation and accordingly judgment may be rendered against said foreign corporation. (Fisher, Philippine Law of Stock Corporation, pp. 451, 456.)

But, was the Fireman's Fund Insurance Co. in September, 1946, then doing business in the Philippines, within legal contemplation? It is a rule generally accepted that one single or isolated business transaction does not constitute "doing business" within the meaning of the law, and that transactions which are occasional, incidental and casual, not of a character to indicate a purpose to engage in business do not constitute the doing or engaging in business

contemplated by law. In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. (Thompson on Corporations, Vol. 8, 3d edition, pp. 844–847 and Fisher's Philippine Law of Stock Corporation, p. 415.)

The Fireman's Fund Insurance Co., to judge by the twelve marine insurance policies issued as already mentioned, policies covering different shipments, made payable in Manila, indorsed in blank, and in practice, collectible by the consignees in Manila or such other persons or entities who meet the terms by paying the amounts of the invoices, rendering it not only convenient but necessary for said Fireman's Fund Insurance Co. to appoint and keep a settling agent in this jurisdiction, was certainly doing business in the Philippines. And these were not casual or isolated business transactions. According to the evidence, since before the war, the Fireman's Fund Insurance Co. would appear to have engaged in this kind of business and had employed its co-defendant Union Insurance Society of Canton, Ltd. as its settling agent, although sometime in 1946, between July and August of that year, appellant had its own employee from its head office in America, one John L. Stewart, acting as its settling agent here. And, to conclusively prove continuity of the business and the intention of the appellant not only to establish but to continue such regular business in this jurisdiction, on November 7, 1946, less than two months after service of summons, it applied for, obtained a license and was authorized to regularly do business in the Philippines.

Counsel for appellant contends that at the time of the service of summons, the appellant had not yet been authorized to do business. But, as already stated, section 14, Rule 7 of the Rules of Court makes no distinction as to corporations with or without authority to do business in the Philippines. The test is whether a foreign corporation was actually doing business here. Otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the corresponding license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts. It would indeed be anomalous and quite prejudicial, even disastrous, to the citizens in this jurisdiction who in all good faith and in the regular course of business accept and pay for shipments of goods from America, relying for their protection on duly executed foreign marine insurance policies made payable in Manila and duly endorsed and delivered to them, that when they go to court

to enforce said policies, the insurer who all along has been engaging in this business of issuing similar marine policies, serenely pleads immunity to local jurisdiction because of its refusal or neglect to obtain the corresponding license to do business here thereby compelling the consignees or purchasers of the goods insured to go to America and sue in its courts for redress.

Appellant further contends that according to section 68 of the Corporation Law, service of summons on a foreign corporation may be made only upon an agent of said corporation residing in the Philippines and authorized by the foreign corporation to accept service. Said section refers to a foreign corporation doing business in the Philippines which has complied with the law and obtained the corresponding license. It does not refer to a foreign corporation actually doing business here but without the corresponding license or authority. In the latter case, service of summons is governed by section 14, Rule 7 of the Rules of Court.

We may add that the defense of lack of jurisdiction interposed by appellant seems to be based on a mere technicality. True, on September 12, 1946, when service of the summons was made, the appellant had not yet been authorized to do business in the Philippines and so it had not yet designated an agent authorized to accept service of summons. But less than two months thereafter, the appellant obtained such license or authority and even according to its own theory was then amenable to the jurisdiction of the local courts. It employed able attorneys who filed an answer, including motions on its behalf, and during the hearing held on October 21, 1947, that is to say, about one year after it had been authorized to do business here, it was represented by the same attorneys who not only cross-examined the witness for the plaintiffs and agreed to or objected to documentary evidence, but introduced a witness on its behalf and presented documentary evidence. Under such circumstances, it must be clear that the appellant may not successfully plead lack of jurisdiction over its person.

The appellant next urges that the plaintiffs had no interest in the insurance policy, having received the same merely for collection according to paragraph VII of the complaint. The truth is that the plaintiffs have such interest sufficient to authorize them to sue on and recover upon said policy because they have met all the terms of the shipper, paid all the amounts demanded by it thru the bank and in turn were given all the shipping papers, including the insurance policy, Exhibit E–2. It is to be remembered that this insurance policy was indorsed in blank and payable in Manila. One of the conditions of said policy is that thru it the appellant insured the shipper

(Western Canvas Products Co.) "as well as in his or their own name as in that of those to whomsoever the subject matter of this policy does, may or shall appertain, in the sum of $2,000" (First paragraph of the policy, Exhibit E–2). Moreover, as correctly found by the trial court, there was an agreement Exhibit 2 attached to Exhibit F–2 whereby the shipper Western Canvas Product Co. authorized the plaintiffs herein to prosecute this case against appellant.

Now, we come to the evidence or proof as to the loss or damage said to have been suffered by the plaintiffs. Said plaintiffs claimed that their documentary evidence Exhibit E to E–23 establish their loss; that said documents are of the same class of documents presented in the other eleven insurance policies and which were approved by the appellant in America in G. R. No. L–2303. Counsel for the appellant, however, insists that the plaintiffs' claim was never approved by appellant or its settling agent. In this we agree. The settling agent here declined to take action upon the claim filed by the plaintiffs based on the policy Exhibit E–2 and said plaintiffs failed or refused to present said claim before the appellant in America. We shall therefore have to determine whether the evidence is sufficient to support the claim. The trial court without discussing the evidence or referring to the documents merely held that the evidence was sufficient to prove the claim.

Examining the evidence we find that Attorney Nabong for the plaintiffs gave no testimony about the loss. He merely identified the documents intended to prove said loss. According to the report (Exhibit E–21) of plaintiffs' surveyor C. B. Nelson & Co., which made the survey in order to ascertain the nature and extent of the damage alleged to have been sustained on the shipment of the 21 cases of merchandise which came on the American Mail Lines *SS Wideawake* which arrived in Manila, on October 14, 1945, covered by the policy Exhibit E–2, eleven cases—Nos. 8, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 21 still remained undelivered, and that claim for these cases should be supported by shortlanded certificates issued by the steamship agent. We failed to find these certificates among the exhibits presented. It seems that efforts were made on behalf of the plaintiffs to obtain these certificates from the Manila Terminal Co. (Exhibit E–8), American Mail Line, Ltd. (Exhibit E–9), and the Luzon Stevedoring Co. (Exhibits E–10 and E–11), but that said certificates were never issued. In Exhibit E–14, the Manila Terminal Co., writing to the Luzon Brokerage Co., and speaking of the eleven cases of merchandise said to have been shortlanded, merely promised to make careful investigation and to issue the corresponding certificate if its record indicated

that the cargoes were not landed from the vessel. And, in Exhibit E–18, the Everett Steamship Corporation in a letter to one of the plaintiffs (General Corporation of the Philippines) said that "all merchandise manifested on the bill of lading No. S–76 was discharged in full and in apparent good order;" that "once cargo leaves the ship's tackle, responsibility was entirely out of our hands," and "in view of the above we regret that we cannot tender recognition of your claim" (apparently referring to the eleven cases). We therefore find that the claim for the loss or shortlanding of these eleven cases which constitute the bulk of the claim has not been proven.

Going back to the report of the surveyor C. B. Nelson & Co. (Exhibit E–21), said report made a detailed survey of the shortage or damage on cases Nos. 5, 9, 13 and 14. According to Exhibit E–7 the shortage or damage on these four cases is valued at $635.50 or ₱1,271. These exhibits E–7 and E–21 were admitted in court without objection by the appellant. We find the claim in the amount of $635.50 to have been duly established.

In conclusion we hold that a foreign corporation actually doing business in this jurisdiction, with or without license or authority to do so, is amenable to process and the jurisdiction of local courts. If such foreign corporation has a license to do business, then summons to it will be served on the agent designated by it for the purpose, or otherwise in accordance with the provisions of the Corporation Law. Where such foreign corporation actually doing business here has not applied for license to do so and has not designated an agent to receive summons, then service of summons on it will be made pursuant to the provisions of the Rules of Court, particularly Rule 7, section 14 thereof. We further hold that where a foreign insurance corporation engages in regular marine insurance business here by issuing marine insurance policies abroad to cover foreign shipments to the Philippines, said policies being made payable here, and said insurance company appoints and keeps an agent here to receive and settle claims flowing from said policies, then said foreign corporation will be regarded as doing business here in contemplation of law.

In view of the foregoing, the decision appealed from is hereby modified so as to reduce the amount awarded to the plaintiffs and to be paid by the appellant Fireman's Fund Insurance Co., from $2,000 to $635.50 or its equivalent in Philippine currency, and in all other respects, the decision is affirmed. No pronouncement as to costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Tuason, and *Reyes, JJ.,* concur.

Judgment modified.

[No. L-2071. September 19, 1950]

Testate estate of Isabel V. Florendo, deceased. TIRSO DACANAY, petitioner and appellant, *vs.* PEDRO V. FLORENDO ET AL., oppositors and appellees.

1. WILLS; EXECUTION OF JOINT WILL OR EXPRESSION BY TWO OR MORE TESTATORS OF THEIR WILLS IN A DOCUMENT BY ONE ACT.—The prohibition of article 669 of the Civil Code is directed against the execution of a joint will, or the expression by two or more testators of their wills in a single document and by one act, rather than against mutual or reciprocal wills, which may be separately executed.

2. ID.; PROVISION OF ARTICLE 669, CIVIL CODE, IS NOT UNWISE.—The provision of article 669 of the Civil Code prohibiting the execution of a will by two or more persons conjointly or in the same instrument either for their reciprocal benefit or for the benefit of a third person, is not unwise and is not against public policy.

3. ID.; PROVISION OF ARTICLE 669, CIVIL CODE, IS STILL IN FORCE.—Considering the wisdom of the provision of this article 669 and the fact that it has not been repealed, at least not expressly, as well as the consideration that its provisions are not incompatible with those of the Code of Civil Procedure on the subject of wills, it is believed that said article of the Civil Code is still in force. (Doctrine of *In re* Will of Bilbao, G. R. No. L-2200, August 2, 1950, reiterated.)

APPEAL from an order of the Court of First Instance of La Union. De Aquino, J.

The facts are stated in the opinion of the court.

Sotto & Sotto for appellant.

Alafriz & Alafriz for appellees.

OZAETA, *J.:*

This is a special proceeding commenced in the Court of First Instance of La Union to probate a joint and reciprocal will executed by the spouses Isabel V. Florendo and Tirso Dacanay on October 20, 1940. Isabel V. Florendo having died, her surviving spouse Tirso Dacanay is seeking to probate said joint and reciprocal will, which provides in substance that whoever of the spouses, joint testators, shall survive the other, shall inherit all the properties of the latter, with an agreement as to how the surviving spouse shall dispose of the properties in case of his or her demise.

The relatives of the deceased Isabel V. Florendo opposed the probate of said will on various statutory grounds.

Before hearing the evidence the trial court, after requiring and receiving from counsel for both parties written arguments on the question of whether or not the said joint and reciprocal will may be probated in view of article 669 of the Civil Code, issued an order dismissing the petition for probate on the ground that said will is null and void *ab initio* as having been executed in violation of

article 669 of the Civil Code. From that order the proponent of the will has appealed.

Article 669 of the Civil Code reads as follows:

"ART. 669. Two or more persons cannot make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person."

We agree with appellant's view, supported by eminent commentators, that the prohibition of article 669 of the Civil Code is directed against the execution of a joint will, or the expression by two or more testators of their wills in a single document and by one act, rather than against mutual or reciprocal wills, which may be separately executed. Upon this premise, however, appellant argues that article 669 of the Civil Code has been repealed by Act No. 190, which he claims provides for and regulates the extrinsic formalities of wills, contending that whether two wills should be executed conjointly or separately is but a matter of extrinsic formality.

The question now raised by appellant has recently been decided by this court adversely to him in *In re* Will of Victor Bilbao, G. R. No. L–2200, August 2, 1950. It appears in that case that on October 6, 1931, the spouses Victor Bilbao and Ramona M. Navarro executed a will conjointly, whereby they directed that "all of our respective private properties both real and personal, and all of our conjugal properties, and any other property belonging to either or both of us, be given and transmitted to anyone or either of us, who may survive the other, or who may remain the surviving spouse of the other." That will was denied probate by the Court of First Instance of Negros Oriental on the ground that it was prohibited by article 669 of the Civil Code. The surviving spouse as proponent of the joint will also contended that said article of the Civil Code has been repealed by sections 614 and 618 of the Code of Civil Procedure, Act No. 190. In deciding that question this court, speaking thru Mr. Justice Montemayor, said:

"We cannot agree to the contention of the appellant that the provisions of the Code of Civil Procedure on wills have completely superseded Chapter I, Title III of the Civil Code on the same subject matter, resulting in the complete repeal of said Civil Code provisions. In the study we have made of this subject, we have found a number of cases decided by this court wherein several articles of the Civil Code regarding wills have not only been referred to but have also been applied side by side with the provisions of the Code of Civil Procedure.

"* * * * * * *

"The provision of article 669 of the Civil Code prohibiting the execution of a will by two or more persons conjointly or in the same instrument either for their reciprocal benefit or for the benefit of a third person, is not unwise and is not against public policy.

The reason for this provision, especially as regards husband and wife, is that when a will is made jointly or in the same instrument, the spouse who is more aggressive, stronger in will or character and dominant is liable to dictate the terms of the will for his or her own benefit or for that of third persons whom he or she desires to favor. And, where the will is not only joint but reciprocal, either one of the spouses who may happen to be unscrupulous, wicked, faithless or desperate, knowing as he or she does the terms of the will whereby the whole property of the spouses both conjugal and paraphernal goes to the survivor, may be tempted to kill or dispose of the other.

"Considering the wisdom of the provisions of this article 669 and the fact that it has not been repealed, at least not expressly, as well as the consideration that its provisions are not incompatible with those of the Code of Civil Procedure on the subject of wills, we believe and rule that said article 669 of the Civil Code is still in force. And we are not alone in this opinion. Mr. Justice Willard as shown by his Notes on the Civil Code, on page 48 believes that this article 669 is still in force. Sinco and Capistrano in their work on the Civil Code, Vol. II, page 33, favorably cite Justice Willard's opinion that this article is still in force. Judge Camus in his book on the Civil Code does not include this article among those he considers repealed. Lastly, we find that this article 669 has been reproduced word for word in article 818 of the New Civil Code (Republic Act No. 386). The implication is that the Philippine Legislature that passed this Act and approved the New Civil Code, including the members of the Code Commission who prepared it, are of the opinion that the provisions of article 669 of the old Civil Code are not incompatible with those of the Code of Civil Procedure."

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Order affirmed.

[No. L-2412. September 19, 1950]

JOSE MARQUEZ LIM, plaintiff and appellee, *vs.* JOHN G. NELSON, J. E. KELLEY, DAVID KEITH and VERN BOSTER, defendants and appellants.

ACTIONS; RECOVERY OF POSSESSION OF PROPERTY AGAINST OFFICERS AND AGENTS OF GOVERNMENT; CONSENT OF GOVERNMENT TO A SUIT.—A private citizen claiming title and right of possession of certain property may, to recover possession of said property, sue as individuals, officers and agents of the Government alleged to be illegally withholding the same from him, though in doing so, said officers and agents claim to have acted for the Government, and the courts may entertain such a suit although the Government itself is not included as a party defendant. However, where the judgment in such a case would result not only in the recovery of possession of the property in favor of said citizen but also is a charge against or financial liability to the Government, then the suit should be regarded as one against the Government itself and cannot prosper and be validly entertained by the courts except with the consent of said Government.

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

J. A. Wolfson for appellant Boster.
First Assistant Solicitor General Roberto A. Gianzon for other appellants.
Benjamin H. Tirol for appellee.

PARÁS, *J.:*

On December 1, 1945, the plaintiff-appellee, Jose Marquez Lim, instituted a complaint in the Court of First Instance of Iloilo against John G. Nelson, J. E. Kelley and David Keith, for the purpose of recovering a motor launch or its value ₱10,000, plus damages in the sum of ₱300 daily from November 20, 1945, it being alleged that the three defendants illegally seized on November 19, 1945, said motor launch belonging to the plaintiff. On January 10, 1946, the three defendants, represented by the Provincial Fiscal of Iloilo, filed an amended answer alleging in special defense that the vessel belonged to the United States Government, that the defendants merely acted as agents of said Government, and that the United States Government is therefore the real party in interest. On January 31, 1946, the plaintiff filed an amended complaint so as to include, as a party defendant, Vern Boster, then detailed as head of the Military Police Command in the City of Iloilo, to whom the launch was delivered by the defendant John G. Nelson in the early part of January, 1946. The vessel subsequently sank while it was being towed from Iloilo to Manila by the U. S. naval authorities. On January 17, 1947, the Court of First Instance of Iloilo rendered a decision the dispositive part of which reads as follows:

"In view of the foregoing, judgment is rendered: (*a*) declaring plaintiff Jose Marquez Lim to be the legal owner of the motor launch 'SEA HAWK' and with exclusive right of possession thereon; (*b*) ordering defendants John G. Nelson, J. E. Kelly, David Keith and Vern Boster to pay the plaintiff jointly and severally the sum of ₱10,000 representing the value of the boat, and the further sum of ₱10,000 as damages; and (*c*) ordering defendants to pay the costs."

After the trial court had denied the motion for new trial filed by the Provincial Fiscal of Iloilo and the motion to set aside the judgment filed by the defendant Vern Boster thru his counsel J. A. Wolfson, the present appeal was interposed.

At the time the vessel in question was seized, the defendant John G. Nelson was the commanding officer of the U. S. Naval Section Base, Navy No. 3959, of the United States Navy in the City of Iloilo; the defendant J. E. Kelley was an officer in said naval section base;

and the defendant David Keith was the Provost Marshal of the United States Army Military Police in Iloilo. It is not pretended that said defendants did not act officially as agents of the United States Navy in the seizure of the motor launch in question. It is not pretended also that the defendant Vern Boster had anything to do with said seizure, having been joined as a party defendant in the amended complaint in virtue solely of the fact that possession of the launch was delivered to him when he took command of the Military Police in Iloilo. Hence it is beyond controversy that the action at bar is directed against the defendants for having acted as agents of the United States Government.

The appealed decision, however, ruled that the fact that the defendants were members of the armed forces of the United States does not place them beyond the power and jurisdiction of the civil courts, and the case of Tan Te *vs.* Bell, 27 Phil. 354, is cited.

In the case of Syquia *vs.* Almeda Lopez, L–1648, decided August 17, 1949 (47 Off. Gaz., 665), we made the following applicable pronouncements:

"We shall concede as correctly did the court of first instance, that following the doctrine laid down in the cases of U. S. *vs.* Lee and U. S. *vs.* Tindal, *supra,* a private citizen claiming title and right of possession of a certain property may, to recover possession of said property, sue as individuals, officers and agents of the Government who are said to be illegally withholding the same from him, tho in doing so, said officers and agents claim that they are acting for the Government, and the courts may entertain such a suit altho the Government itself is not included as a party-defendant. Of course, the Government is not bound or concluded by the decision. The philosophy of this ruling is that unless the courts are permitted to take cognizance and to assume jurisdiction over such a case, a private citizen would be helpless and without redress and protection of his rights which may have been invaded by the officers of the Government professing to act in its name. In such a case the officials or agents asserting rightful possession must prove and justify their claim before the courts, when it is made to appear in the suit against them that the title and right of possession is in the private citizen. However, and this is important, where the judgment in such a case would result not only in the recovery of possession of the property in favor of said citizen but also is a charge against or financial liability to the Government, then the suit should be regarded as one against the Government itself, and, consequently, it cannot prosper or be validly entertained by the courts except with the consent of said Government. (*See* case of Land *vs.* Dollar, 91 Law ed., 1209.)"

Inasmuch as the payment of the sum of ₱10,000 as the value of the motor launch in question and of the further sum of ₱10,000 as damages, will in fact be a charge against or a financial liability to the Government of the United States, the present action should be regarded as one against the United States Government itself which cannot prosper or be validly entertained by the courts except with the consent of said Government.

Wherefore, the appealed judgment is hereby set aside and the complaint is dismissed. So ordered, without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Judgment set aside and complaint dismissed.

[No. L-2870. September 19, 1950]

CHUA NGO, plaintiff and appellee, *vs.* UNIVERSAL TRADING CO., INC., defendant and appellant.

PURCHASE AND SALE; PART OF GOODS LOST IN TRANSIT; WHO IS TO SUFFER THE LOSS.—Chua Ngo purchased and paid for 300 boxes of oranges from Universal Trading Co. In turn, the latter purchased from Gabuardi Company of San Francisco F. O. B. San Francisco sufficient fruit to comply with its contract with Chua Ngo. Part of the orange consignment from Gabuardi Company of San Francisco was lost in transit and so Chua Ngo received 120 boxes only. *Held,* as between Gabuardi Company and Universal Trading Co., the loss must be borne by the latter, said goods having been legally delivered to the purchaser at San Francisco on board the vessel; Chua Ngo, as a consequence, is entitled to be paid back for the price paid for the undelivered goods.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Manuel O. Chan and *H. B. Arandia* for appellant.
Arsenio Sy Santos for appellee.

BENGZON, *J.:*

Chua Ngo delivered, in Manila, to the Universal Trading Company, Inc., a local corporation, the price of 300 boxes of Sunkist oranges to be gotten from the United States. The latter ordered the said boxes from Gabuardi Company of San Francisco, and in due course, the goods were shipped from that port to Manila "F. O. B. San Francisco." One hundred eighty boxes were lost in transit, and were never delivered to Chua Ngo.

This suit by Chua Ngo is to recover the corresponding price he had paid in advance.

Universal Trading Company refused to pay, alleging it merely acted as agent of Chua Ngo in purchasing the oranges. Chua Ngo maintains he bought the oranges from Universal Trading Company, and, therefore, is entitled to the return of the price corresponding to the undelivered fruit.

From a judgment for plaintiff, the defendant appealed.

It appears that on January 14, 1946, the herein litigants signed the document Exhibit 1, which reads as follows:

UNIVERSAL TRADING COMPANY, INC.

Far Eastern Division
R–236–238 Ayala Building
Juan Luna, Manila

CONTRACT No. 632

14 January 1946

Agreement is hereby made between Messrs. Chua Ngo of 753 Folgueras, Manila, and the Universal Trading Company, Inc., Manila, for order as follows and under the following terms:

Quantity	Merchandise and description	Unit	Unit price	Amount
300	Sunkist oranges, wrapped Grade No. 1	.....	.....	.....
	Navel, 220 to case	Case	$6.30	$1,890.00
300	Onions, Australian Browns, 90 lbs. to case	Case	$6.82	$2,046.00

We are advised by the supplier that the charges to bring these goods to Manila are:

Oranges ..... $3.06 per case
Onions ..... 1.83 per case

Deposit of 40% of the contract price plus the above charges to be payable immediately upon receipt of telegraphic confirmation. Balance payable upon arrival of goods in Manila. If balance is not paid within 48 hours of notification merchandise may be resold by Universal Trading Co., Inc. and the deposit forfeited.

NOTE:—

Onions cancelled by supplier.
(Initialed) R.E.H.

Total amount of order $3,936

Agreed and accepted:

(Sgd.) CHUA NGO

Confirmed and approved:

(Sgd.) RALPH E. HOLMES
Sales manager
Universal Trading Company, Inc.

(See terms of agreement on reverse side)

On the same date, the defendant forwarded an order to Gabuardi Company of San Francisco, U. S. A., which in part says:

ORDER No. 707

To GABUARDI COMPANY OF CALIFORNIA
258 Market Street
San Francisco, California

Please send for our account, subject to conditions on the back of this order, the following merchandise enumerated below:

Shipping instructions
Via San Francisco, California

Terms: F. O. B. San Francisco

Quantity	Articles	Unit	Unit price	Total price
300	Sunkist oranges wrapped Grade No. 1	.....	.....	.....
	Navel, 220 to case	Case	$6.00	$1,800.00

* * * * * * *

Approved:
Universal Trading Company, Inc.
(Sgd.) RALPH R. HOLMES
Sales Manager

* * * * * * *

On January 16 and January 19, 1946, the Universal Trading Co., Inc., wrote Chua Ngo two letters informing him that the contract for oranges (and onions) had been confirmed by the supplier—i. e., could be fulfilled—and asking for deposit of 65% of the price and certain additional charges.

On January 21, 1946, Chua Ngo deposited with the defendant, on account of the Sunkist oranges, the amount of ₱3,650, and later (March 9, 1946), delivered the additional sum of ₱2,822.43 to complete the price, as follows:

300 cases of oranges at $9.36	₱6,616.00
Bank charges	196.56
Customs charges, etc.	270.00
Delivery charges	171.00
3½ percent sales tax	218.00
	₱6,253.56
Less deposit R. No. 1062	3,650.00
	₱2,822.43

The 300 cases of oranges ordered by the defendant from Gabuardi Company were loaded in good condition on board the S/S Silversandal in the port of San Francisco, together with other oranges (totalling 6,380 cases) for other customers. They were all marked "UTC Manila" and were consigned to defendant. The Silversandal arrived at the port of Manila on March 7, 1946. And out of the 6,380 boxes of oranges, 607 cases were short landed for causes beyond defendant's control. Consequently, defendant failed to deliver to Chua Ngo 180 cases of the 300 cases contracted for. The total cost of such 180 cases (received by defendant) is admittedly ₱3,882.60.

The above are the main facts according to the stipulation of the parties. Uncontradicted additional evidence was introduced that the mark "UTC Manila" written on all the boxes means "Universal Trading Company, Manila"; that the defendant paid in its own name to Gabuardi Company the shipment of oranges, and made claims for the lost oranges to the steamship company and the insurance company that insured the shipment; and finally, that in the transaction between plaintiff and defendant, the latter received no commission.

The crucial question is: Did Universal Trading Company merely agree to buy *for and on behalf* of Chua Ngo the 300 boxes of oranges, or did it agree to sell—and sold—the oranges to Chua Ngo? If the first, the judgment must be reversed; if the latter, it should be affirmed.

In our opinion, the circumstances of record sufficiently indicate a sale. First, no commission was paid. Second, Exhibit 1 says that "if balance is not paid within 48 hours of notification, merchandise *may be resold* by the Universal Trading Company *and the deposit forfeited.*" "Resold" implies the goods had been sold to Chua Ngo. And forfeiture of the deposit is incompatible with a contract of agency. Third, immediately after executing Exhibit 1 wherein oranges were quoted at $6.30 per box, Universal Trading placed an order for purchase of the same with Gabuardi Company at $6 per box. If Universal Trading Company was agent of Chua Ngo, it could not properly do that. Inasmuch as good faith is to be presumed, we must hold that Universal Trading acted thus because it was not acting as agent of Chua Ngo, but as independent purchaser from Gabuardi Company. Fourth, the defendant charged the plaintiff the sum of ₱218.87 for 3½ percent *sales* tax, thereby implying that their transaction was a sale. Fifth, if the purchase of the oranges had been made on behalf of Chua Ngo, all claims for losses thereof against the insurance company and against the shipping company should have been assigned to Chua Ngo. Instead, the defendant has been pressing such claims for itself.

In our opinion, the arrangement between the parties was this: Chua Ngo purchased from Universal Trading Company, 300 boxes of oranges at $6.30 plus. In turn, the latter purchased from Gabuardi Company at $6 plus. sufficient fruit to comply with its contract with Chua Ngo.

Unfortunately, however, part of the orange consignment from San Francisco was lost in transit. Who is to suffer that loss? Naturally, whoever was the owner of the oranges at the time of such loss. It could not be Chua Ngo because the fruit had not been delivered to him. As between Gabuardi and the Universal Trading, inasmuch as the goods had been sold "F. O. B. San Francisco", the loss must be borne by the latter, because under the law, said goods had been delivered to the purchaser at San Francisco on board the vessel Silversandal.[1] That is why the Universal has been trying to recover the loss from both the steamship company and the insurer.

Now, as Chua Ngo has paid for 300 boxes and has received 120 boxes only, the price of 180 boxes undelivered must be paid back to him.

It appears that whereas in the lower court defendant sustained the theory that it acted as agent of plaintiff, in this Court the additional theory is advanced that it acted as agent of Gabuardi Company. This obviously has no merit.

[1] Behn, Meyer & Co. *vs.* Yangco (38 Phil., 602).

As to the contention that defendant incurred no liability because it is admitted that the oranges were lost due to causes beyond the control of the defendant, and the oranges were shipped "F. O. B. San Francisco", the answer is that such contention is based on the assumption—which we reject—that defendant merely acted as agent of plaintiff in the purchase of the oranges from Gabuardi.

In view of the foregoing, the appealed judgment for plaintiff in the sum of ₱3,882.60 is affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Judgment affirmed.

[No. L-3450. September 19, 1950]

In the matter of the petition of PURIFICACION M. JOSON and EROTITA M. JOSON, petitioners, *vs.* MARIANO NABLE, in his capacity as Judge of First Instance of Nueva Ecija, FELICISIMO C. JOSON, CAROLINA JOSON, RICARDO JOSON, VICTOR JOSON, EDUARDO JOSON, and CONSUELO JOSON, respondents.

1. WILLS; PROBATE; NOTICE TO HEIRS INDIVIDUALLY WHEN UNNECESSARY; SERVICE OF NOTICE TO INDIVIDUAL HEIRS AS MATTER OF PROCEDURE.—Under the provision of section 4 of Rule 77 of the Rules of Court, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation. What is, therefore, indispensable to the jurisdiction of the court is the publication of the notice in a newspaper of general circulation, and the notice on individual heirs, legatees and devisees is merely a matter of procedural convenience to better satisfy in some instances the requirements of due process.

2. COURTS; LACK OF JURISDICTION AND EFFECTS OF PROCEDURAL ERROR, DISTINGUISHED.—There is indeed a great difference between the consequences of lack of jurisdiction and the effects of a mere procedural error. In the first instance, the proceedings are null and void unconditionally, while in the second, the proceedings are also null and void if and when the error is shown to have caused harm.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

E. Voltaire Garcia for petitioners.
Francisco Lavides for respondents.

MORAN, *C. J.:*

This is a special civil action to set aside a decision rendered by the respondent Court admitting to probate a will allegedly executed by the deceased Tomas Joson.

Petitioners, Purificacion M. Joson and Erotita M. Joson, are the daughters of the deceased, Tomas Joson, had with

his second wife, Pomposa Miguel, also deceased. The respondents, surnamed Joson, are the children and grandchildren of the deceased, Tomas Joson, had with his first wife, Eufemia de la Cruz, also deceased.

On July 19, 1945 a petition was filed with the Court of First Instance of Nueva Ecija for the probate of a supposed will left by the deceased Tomas Joson. In that petition the residence of petitioners herein was given as Dagupan Street No. 83, Manila. An order was issued by the court notifying all interested parties that the hearing of the petition would take place on August 22, 1945 at 9 o'clock in the morning and said order was published in the *Philippines Free Press* once a week for three consecutive weeks. The petition was called for hearing on the date and time above-mentioned, and nobody appeared to contest the will. Evidence was introduced to prove the authenticity and due execution of said will by the deceased Tomas Joson, and on August 22, 1945 a decision was rendered finding the will to have been executed by Tomas Joson in accordance with law. Felicisimo C. Joson, one of the respondents, was appointed executor thereof with a bond of ₱5,000. No appeal was taken from this decision and the regular course of the proceedings was followed for the liquidation and distribution of all the properties left by the deceased.

More than three years later, or on December 7, 1948, petitioners filed a motion to set aside the decision rendered on August 22, 1945, upon the ground, among others, that petitioners had not been notified of the hearing of the petition for probate. The court granted the motion, but upon reconsideration, the decision of August 22, 1945 was restored into full force and effect. Hence this petition for certiorari, instead of an appeal.[1]

As to whether or not petitioners were duly informed of the petition for probate, hearing for several days had been held before the respondent court, where evidence was presented by both parties, which is not now before this court. Had an appeal been taken from the order complained of, it would have been taken to the Court of Appeals, where the evidence could be examined fully for the purpose of ascertaining whether or not petitioners were informed of the petition for probate.

But petitioners maintain that the respondent court acted without absolutely any jurisdiction in admitting the will to probate. They rely on Rule 77, section 4 which reads as follows:

"SEC. 4. *Heirs, devisees, legatees, and executors to be notified by mail or personally.*—The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the known heirs, legatees, and devisees of the testator resident

[1] Monteverde *vs.* Jaranilla (60 Phil., 297).

in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten days before the day of hearing shall be equivalent to mailing."

Petitioners maintain that no notice was received by them partly because their residence was not Dagupan Street No. 83 as alleged in the petition for probate. If the allegation of the petition was wrong and the true residence of petitioners was not known, then notice upon them individually was not necessary. Under the provision above-quoted, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation. What is, therefore, indispensable to the jurisdiction of the court is the publication of the notice in a newspaper of general circulation, and the notice on individual heirs, legatees and devisees is merely a matter of procedural convenience to better satisfy in some instances the requirements of due process.

There is indeed a great difference between the consequences of lack of jurisdiction and the effects of a mere procedural error. In the first instance, the proceedings are null and void unconditionally, while in the second, the proceedings are also null and void if and when the error is shown to have caused harm.[2] In the instant case, the supposed lack of notice upon petitioners, without a showing that they were thereby prejudiced, would be considered a harmless error which is not reversible on appeal.[3]

This is the reason why it is provided that a motion for relief under Rule 38 should be accompanied by affidavits of merits[4] which are intended as a means of evincing that, in case the relief prayed for is granted, it is not granted uselessly, for petitioner possesses sufficient evidence to establish the merits of his case. There are no such affidavits of merits accompanied to the motion filed by petitioners before the respondent court. There are conclusions stated in said motion and also a general averment of fraud. But facts, not conclusions, should be stated in an affidavit of merit,[5] and fraud must always be averred with particularity.[6]

[2] Banco Español Filipino *vs.* Palanca (37 Phil., 921); Perkins *vs.* Dizon (69 Phil., 186).

[3] Rule 53, sec. 3.

[4] Rule 38, sec. 3.

[5] Estrella *vs.* Zamora (5 Phil., 415); Coombs *vs.* Santos (24 Phil., 446).

[6] Rule 15, sec. 12.

Petitioners are furthermore guilty of laches. There is sufficient data in the record to show that petitioners had knowledge of the proceedings since August 19, 1945 and yet, without any justification whatsoever, they failed to take any move, for more than three years, against the decision of August 22, 1945.

From all the foregoing, petition is denied with costs against the petitioners.

Ozaeta, Parás, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Petition denied.

[No. L–1944. September 20, 1950]

PHILIPPINE NATIONAL BANK, plaintiff and appellant, *vs.* JOHN RANDRUP, VICENTE TOMAS and PEDRO AGOY, defendants and appellees.

1. OBLIGATIONS AND CONTRACTS; DEBT MORATORIUM; SCOPE.—The debt moratorium is general in scope and does not make any discrimination in favor of the Philippine National Bank.
2. ID.; ID.; MORATORIUM ORDER NOT REPEALED BY COMMONWEALTH ACT No. 672.—Commonwealth Act No. 672 providing for the rehabilitation of the Philippine National Bank did not repeal the Moratorium Order.

APPEAL from an order of the Court of First Instance of Nueva Ecija. Melendres, J.

The facts are stated in the opinion of the court.

Ramon B. de los Reyes for appellant.
Mariano Sta. Romana for appellees.

PARÁS, *J.:*

On October 31, 1941, the Court of First Instance of Nueva Ecija rendered a judgment, "sentencing the defendants to pay jointly and severally unto the plaintiff, the sum of ₱591.92, with daily interest thereon from today at ₱0.137 plus an additional sum of ₱59.19 as attorney's fees, and to pay the cost of this suit." On June 30, 1947, the plaintiff, Philippine National Bank, filed in the Court of First Instance of Nueva Ecija, a petition for reconstitution, in view of the loss of the records of the case. By an order dated October 1, 1947, the Court of First Instance of Nueva Ecija, declared the record reconstituted with the presentation of a copy of the decision of October 31, 1941, and ordered that, after the expiration of thirty days from receipt by the defendants of copy of said order of October 1, 1947, without the defendants having taken any measure against said order, execution be issued. On October 28, 1947, the defendants filed a motion for suspension of execution in view of the debt moratorium (Executive Order No. 25 dated November 18, 1944, as amended by Executive Order No. 32 dated March 10, 1945), which motion was granted by the Court of First Instance of Nueva Ecija,

in its order dated November 17, 1947. Upon denial of the motion for reconsideration filed by the plaintiff, the latter interposed the present appeal.

Although proper step for the plaintiff to have taken was to institute an action for the revival of the judgment of October 31, 1941, the error may be considered as non-prejudicial, especially when account is taken of the fact that the defendants had never objected to the procedure pursued by the plaintiff and the lower court.

The appeal is without merit, it appearing that the debt moratorium is general in scope and does not make any discrimination in favor of the plaintiff bank. We cannot subscribe to the argument that Commonwealth Act No. 672, passed on July 19, 1945, had the effect of repealing the Moratorium Order in so far as the plaintiff bank is concerned, because the principal purpose of said Act was merely to allow the plaintiff bank to resume business with the view to its rehabilitation, and this purpose may obviously be accomplished in spite of the debt moratorium.

While the order suspending execution of the judgment of October 31, 1941, is correct, attention must be called to Republic Act No. 342 lifting the debt moratorium as regards prewar obligations subject to certain conditions.

The appealed order is therefore affirmed without costs. So ordered.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, and *Reyes, JJ.*, concur.

Order affirmed.

[No. L-2127. September 20, 1950]

VICENTA FELIX VDA. DE SALGADO ET AL., petitioners; THE ARANQUE MARKET EXTENSION CHINESE VENDORS ASSOCIATION, petitioner and appellant, *vs.* MANUEL DE LA FUENTE, Mayor of Manila, MARCELINO SARMIENTO, City Treasurer, and ALEJANDRO SANTOS, Market Administrator, respondents and appellees.

1. MUNICIPAL CORPORATIONS; PUBLIC MARKET; WHETHER MARKET IS PRIVATELY OWNED OR NOT IS A PUBLIC MARKET.—A market is a "public market" when it is dedicated to the service of the general public and is operated under government control and supervision as a public utility, whether it be owned by the government or any instrumentality thereof or by any private individual. It is settled doctrine that "a public market may be the object of individual ownership or lease, subject to municipal supervision and control." (43 C. J., 394.)

2. ID.; ID.; FACTORS DETERMINING A PUBLIC MARKET.—The factors determining a public market are the purpose or use to which such a market is dedicated and the authority under which it operates, and not the fact or status of ownership. It is evident that this is the concept of "public markets" as meant by Republic Act No. 37, otherwise the law would have specifically narrowed its denomination of "public market" to those strictly of public ownership.

3. CONSTITUTIONAL LAW; VALIDITY OF CITY ORDINANCE No. 3051 ENFORCING REPUBLIC ACT No. 37.—Republic Act No. 37 is valid and constitutional (Co Ching *vs.* Cuaderno, 46 Off. Gaz., 4833); hence, City Ordinance No. 3051 promulgated in pursuance thereof is also valid and constitutional it being a reasonable and valid enforcement of said law.

APPEAL from an order of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

Koh, Aguilar & Koh for appellant.

Acting City Fiscal A. P. Montesa and *Assistant City Fiscal Arsenio Nañawa* for appellees.

PER CURIAM:

This is a petition for prohibition, challenging the constitutionality and validity of Republic Act No. 37 and Municipal Ordinance No. 3051, and seeking to permanently enjoin respondents from enforcing said Republic Act and city ordinance.

It appears that the petitioner is an association composed of market stallholders, most of whom are Chinese, engaged in the business of selling fresh foodstuffs at the Aranque Market Extension. By virtue of a contract of lease, petitioner erected a market building on the private property of deceased Julian Salgado, which is immediately adjoining the Aranque Market owned by the City of Manila. This market has been known as the Aranque (Dulongbayan) Market Extension. The operation of said market was licensed by the city in May, 1946, and was operated under its supervision and control, in accordance with the ordinances, rules and regulations governing public markets. Sometime in January, 1948, petitioner's Chinese members were served by the City Treasurer with notices to vacate the market stalls held by them, pursuant to Ordinance No. 3051 of the City of Manila passed in furtherance of the government policy enunciated in Republic Act No. 37. The herein petitioner filed a petition for prohibition with the Court of First Instance of Manila to enjoin the herein respondents from enforcing said ordinance. After hearing, the lower court denied the petition. A motion for reconsideration which was filed, was also subsequently denied. Hence, the petition now before this court.

Republic Act No. 37, passed by Congress on October 1, 1946, provides:

"SEC. 1. All citizens of the Philippines shall have preference in the lease of public market stall.

"SEC. 2. The Secretary of Finance is hereby empowered to promulgate the necessary rules to carry into effect the purposes of this Act.

"SEC. 3. All existing laws or parts thereof contrary to the provisions of this Act are hereby repealed.

"SEC. 4. This Act shall take effect on the first day of January, nineteen hundred and forty seven."

Ordinance No. 3051 passed by the Municipal Board of Manila on June 13, 1947, declared that "any existing privilege or permission heretofore granted for the occupancy of a public market stall shall terminate on June 30, 1947" and that "citizens of the Philippines shall have preference in the granting of licenses for the occupancy of public market stalls in accordance with the provisions of Republic Act No. 37."

The questions before this court in the instant case are: first, whether or not the Aranque Market Extension in which petitioners are stallholders, is a public market to the extent of coming within the purview of Republic Act No. 37 and other legislation pursuant thereto; and second, whether or not Ordinance No. 3051 is valid and constitutional in its enforcement of the policy of the government enunciated in Republic Act No. 37.

Petitioners allege that the Aranque Market Extension is not a public market within the meaning of all laws, ordinances, orders and regulations governing public markets because said market stands on private property and its building was erected with private funds. This contention is not well taken. A market is a "public market" when it is dedicated to the service of the general public and is operated under government control and supervision as a public utility, whether it be owned by the government or any instrumentality thereof or by any private individual. It is settled doctrine that a "public market may be the object of individual ownership or lease, subject to municipal supervision and control." (43 C. J., p. 394.) Thus, if a market has been permitted to operate under government license for service to the general public, it is a "public market" whether the building that houses it or the land upon which it is built be of private or public ownership. This is not different from public vehicles or vehicles of public utility which are so classified whether they be owned by private individuals or by government instrumentalities. The factors determining a "public market" therefore, are the purpose or use to which such a market is dedicated and the authority under which it operates, and not the fact or status of ownership. It is evident that this is the concept of "public market" as meant by Republic Act No. 37, otherwise the law would have specifically narrowed its denomination of 'public market' to those strictly of public ownership. In the instant case, it has been proven and admitted that the Aranque Market Extension is dedicated to the service of the general public and is operating under license of the City of Manila in accordance with all laws, rules and regulations governing public markets. Consequently, there is no doubt whatsoever that the Aranque Market Extension is a public market within the pur-

view of Republic Act No. 37 and all laws, regulations and ordinances promulgated in pursuance thereof.

As regards the validity and constitutionality of City Ordinance No. 3051, promulgated in pursuance of Republic Act No. 37, we held in Co Chiong *vs.* Cuaderno, (46 Off. Gaz., 4833), that Republic Act No. 37 is valid and constitutional; hence, City Ordinance No. 3051 is also valid and constitutional it being a reasonable and valid enforcement of Republic Act No. 37. There is nothing in said ordinance that contravenes or exceeds the scope and purpose of Republic Act No. 37. It simply sets a date on which all licenses or privileges for the occupancy of market stalls would terminate, and which is applied to all market stall holders without discrimination whatsoever. The preference given therein to citizens of the Philippines in the issuance of new licenses or privileges, is but the express mandate of Republic Act No. 37.

Petitioner further alleges that the ejectment of its members from the Aranque Market Extension and the use by Filipino stallholders of petitioner's privately-owned improvements amount to unlawful confiscation of their property.

It appears, however, of record, in the exhibits submitted by petitioner, that on May 14, 1946, petitioner urgently requested from the Mayor of the City of Manila, permission for its members, "even temporary" to sell fresh foodstuff at the Aranque Market Extension "pending negotiation by the government with Mr. Julian Salgado as landowner, in the matter of lease of the same, as well as outright purchase of the edifices if necessary, or whatever arrangement that may be agreed by all parties concerned. * * *" Acting upon this urgent request, the acting administrator of city market, issued a memorandum to the market-master in the Aranque Market to allow the sale of foods in the Aranque Market Extension "while final arrangement is being transacted."

It is clear, therefore, that petitioner was fully cognizant that the status of its members as stallholders in the Aranque Market Extension was temporary and conditional. Fully cognizant of this situation, they cannot now allege that their ejectment would be confiscatory under the circumstances. Moreover, it is admitted by petitioner that the City of Manila has allowed them to remove all the improvements built by them. If petitioners had failed to provide for the contingency that now faces them due to the loss of their stalls, they must suffer the consequences of their unwarranted assumption of permanency as stallholders in the Aranque Market Extension.

Considering, therefore, that the Aranque Market Extension is a public market within the purview of Republic Act No. 37 and Ordinance No. 3051 of the City of Manila

which are valid and constitutional legislation, and considering further that no substantial nor constitutional rights of petitioners have been unlawfully violated, this court hereby dismisses the petition, with costs. It is so ordered.

Moran, C. J., Ozaeta, Parás, Feria, Pablo, Montemayor, and *Reyes, JJ.*

Petition dismissed.

[No. L-1977. September 21, 1950]

KOPPEL (PHILIPPINES) INC., plaintiff and appellant, *vs.* THE COLLECTOR OF INTERNAL REVENUE, defendant and appellee.

1. TAXATION; PERCENTAGE TAX; COLLECTOR WITHOUT AUTHORITY TO EXTEND PERIOD FOR PAYMENT.—The Collector of Internal Revenue has no authority to extend the period for payment of percentage taxes.
2. ID.; ID.; WHEN IS COLLECTOR AUTHORIZED TO REFUND OR REMIT TAXES.—Under section 309 of the National Internal Revenue Code, the Collector of Internal Revenue may credit or refund taxes only when erroneously or illegally received, or refund penalties only when imposed without authority, or remit before payment any tax only when unjustly assessed or excessive. He is not authorized to refund taxes as a matter of gratuity.
3. ID.; ID.; AUTHORITY OF COLLECTOR TO COMPROMISE NOT SUBJECT TO INTERFERENCE BY COURT.—Where the Collector of Internal Revenue is vested with authority to compromise cases, such authority should be exercised in accordance with the Collector's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another.
4. ID.; ID.; IMPOSSIBILITY AS EXCUSE FOR NON-PAYMENT; CASE AT BAR.—In the case at bar, no order was issued and no action was taken by the Government which made it impossible for appellant to pay its taxes on February 28, 1946. The fact that appellant received the reply of the Collector of Internal Revenue denying the extension requested by it one day after the last day of payment, is not a valid excuse for non-payment on time. The delayed reply was not the true cause of non-payment, because appellant had enough money to pay the taxes and there was nothing to preclude it from making payment, except its negligence due to ignorance of the law; and it is elementary that ignorance of the law excuses no one from compliance therewith.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Padilla, Carlos & Fernando for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Esmeraldo Umali* for appellee.

MORAN, *C. J.:*

On February 14, 1946, plaintiff submitted its percentage tax return for the last quarter of 1941, wherein it appeared that the percentage tax it owed the government

amounted to ₱7,156.40. This tax should have been paid on or before January 20, 1942, but it was not so paid on account of the war. Commonwealth Act No. 722 was passed by Congress extending the period of payment to the last day of February, 1946. In its return above-mentioned, plaintiff requested defendant to authorize postponement of payment so that it may re-establish its business on a more normal basis, but defendant, in a letter dated February 27, 1946 but received by plaintiff on March 1, 1946, denied the request for lack of authority to grant the same. Wherefore, plaintiff paid the tax the same day it received defendant's reply letter, namely, on March 1, 1946. Defendant demanded payment of surcharge corresponding to one day delinquency which plaintiff paid under protest, after a considerable discussion with defendant. The surcharge thus paid was 25 per cent on the aforesaid percentage tax, and amounted to ₱1,789.10. Action was filed to recover the amount paid under protest, and after trial, judgment was rendered for the defendant. Hence, this appeal by plaintiff.

There is no question that the percentage tax should have been paid on or before February 28, 1946, and that it was not so paid until March 1, 1946. Nor is there any question that the Collector of Internal Revenue has no authority to extend the period for payment of percentage taxes. In a case where Chinese citizens could not pay their taxes because of riots against them, and their request for extension of the time to pay was denied, this court held—

"SECTION 1458 of the Administrative Code, as last amended by Act No. 3074, provides the following: 'The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter * * *. If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax.' This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment." (Lim Co Chui *vs.* Posadas, 47 Phil., pp. 462, 463.)

On the other hand, appellant invokes section 309 of the National Internal Revenue Code which reads as follows:

"SEC. 309. *Authority of Collector to make compromise and to refund taxes.*—The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive."

In the instant case, however, the payment of the percentage taxes owed by plaintiff was received by the de-

fendant neither erroneously nor illegally. The Collector acted rightly and legally in receiving such payment. Said taxes were not "unjustly assessed or excessive," for there is absolutely no dispute as to the correctness of the assessment. The surcharge demanded and paid was not a "penalty imposed without authority." Again, this court in Lim Co Chui *vs.* Posadas, (*supra*) held:

"SECTION 1582 of the Administrative Code, as amended by Act No. 2835, provides the following: 'The Collector of Internal Revenue * * * may remit before payment any tax that appears to be unjustly assessed or excessive.' This provision confers discretion on the Collector of Internal Revenue in certain cases but not in the instant case. The twenty-five per cent penalty for non- payment is not 'unjustly assessed' because it is not assessed at all, and is not 'excessive' because it is merely the amount specifically fixed by the law. The Collector of Internal Revenue simply collects that which the law has said that he must collect. He is not authorized to refund taxes as a matter of gratuity."

And in the instances in which the Collector of Internal Revenue is vested with authority to compromise, such authority should be exercised in accordance with the collector's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another.

Appellant seems to seek refuge in a statement made by this court in the case above cited (Lim Co Chui *vs.* Posadas) which is as follows:

"It may possibly be, as intimated by Judge Cooley in his standard treatise on taxation, volume 2, page 901, that 'there might be excuses for non-payment which would justify the interference of the courts.' The maxim is: *Impossibilium nulla obligatio est.* There is no obligation to do impossible things. But here, there is no allegation in the complaint that the inability of the Chinese to pay their taxes on time was due to any order by the Government or to any action taken by the Government, and no allegation that the delay in payment was caused by the fault of him to whom it was to be paid."

In the instant case, no order was issued and no action was taken by the government which made it impossible for plaintiff to pay its taxes on February 28, 1946. Plaintiff claims that the collector's delay in sending his reply letter was the cause of such impossibility. It is a fact, however, that impossibility was not the true cause of non-payment because plaintiff, on February 28, 1946, had enough money to pay said taxes and there was nothing precluding it from making payment, except its negligence due to ignorance of the law. Plaintiff did not know that the defendant had no authority to postpone payment, and, therefore, the request for extension was a waste of time. What is more, plaintiff had no right to take for granted that its request for extension would be granted by defendant. When plaintiff received no reply to its request on or before February 28, 1946, its duty was to inquire from

defendant what his decision was, or to pay the taxes before the expiration of the time fixed by law. The trouble was that apparently plaintiff did not even know when the last day of payment was. And it is elementary that ignorance of the law excuses no one from compliance therewith.

In view of the foregoing, judgment is affirmed with costs against the appellant.

Ozaeta, Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Judgment affirmed.

[No. L–2374. Septiembre 21, 1950]

APOLINAR ABEL, demandante y apelante, *contra* PILAR DE LIMA y FELIX MALASARTE, demandados y apelados

1. CONTRATOS; NOVACIÓN DE CONTRATO; SUSTITUCIÓN DE UNA OBLIGACIÓN POR OTRA.—Legalmente no pueden coexistir ambas obligaciones, porque la última sustituye a la primera, según convenio de las partes. Este convenio es ley entre ellas. (Art. 1255 del Cód. Civ.) La sustitución de una obligación por otra significa la cancelación de la antigua y la validación exclusiva de la nueva. Ambas obligaciones son incompatibles.
2. LEY DE MORATORIA; OBLIGACIÓN CONTRAÍDA DESPUÉS DE LA LIBERACIÓN.—Obligaciones contraídas después de la liberación están incluídas en la excepción, y comprendidas en la expresión "monetary obligation entered into" después de su liberación.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Natividad, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Luis R. Aclaro en representación del apelante.
D. Jose S. Sarte en representación de los apelados.

PABLO, *M.:*

Se trata de una apelación directa a este Tribunal contra una decisión del Juzgado de Primera Instancia de Manila, suscitando solamente cuestiones de derecho.

Los hechos probados, según dicho Juzgado, son los siguientes: En 25 de marzo de 1945 los demandados otorgaron un pagaré a favor del demandante por la suma de ₱14,000, moneda filipina, pagadero en cuatro anualidades iguales, con interés de seis porciento, Exhíbit A, en sustitución de cuatro pagarés otorgados por ellos mismos en 1944, por las siguientes cantidades y fechas: En 11 de agosto, 45,000; en 15 de septiembre, 35,000; en 10 de octubre, 30,000; y en 15 de noviembre, 27,600; total, 137,600 en papel moneda japonesa. La reducción a ₱14,000 de las varias cantidades que constan en los cuatro pagarés se ha hecho a sugestión de los demandados.

Después del otorgamiento del pagaré Exhíbit A el demandante canceló los cuatro pagarés y los devolvió a los demandados.

El Juzgado, después del juicio correspondiente, sobreseyó la demanda, con costas. El demandante apeló, y sostiene que el Juzgado *a quo* cometió dos errores: 1.°, al declarar que no hubo novación de contrato; y 2.°, al declarar que el demandante no tiene derecho de acción por la orden de moratoria.

Es evidente que con el otorgamiento del pagare Exhíbit A en 25 de marzo de 1945 en la cantidad de ₱14,000 en sustitución de los cuatro pagarés que fueron cancelados y después devueltos a los demandados, hubo una completa novación de contrato. Con esta transacción los demandados dejaron de estar obligados a pagar el importe de los cuatro pagarés que montan a 137,600 en papel moneda japonesa; en cambio, se comprometieron a pagar la cantidad de ₱14,000 moneda filipina.

Legalmente no pueden coexistir ambas obligaciones, porque la última sustituye a la primera, según convenio de las partes. Este convenio es ley entre ellas. (art. 1255 del Cód. Civ.) La sustitución de una obligación por otra significa la cancelación de la antigua y la validación exclusiva de la nueva. Ambas obligaciones son incompatibles.

El artículo 1204 del Código Civil dispone que "Para que una obligación quede extinguida por otra que la sustituya, es preciso que así se declare terminantemente, o que la antigua y la nueva sean de todo punto incompatibles." En el Exhíbit A no hay una declaración expresa de que quedaban extinguidas las obligaciones de los demandados contenidas en los cuatro pagarés; pero, según conclusión de hecho del Juzgado *a quo,* los demandados otorgaron el Exhíbit A en sustitución de aquellos cuatro, por cuya razón fueron cancelados por el demandante y a continuación devueltos a los demandados. Si continuaran en vigor aquellos cuatro pagarés, tendría que ser nulo el Exhíbit A porque ya no obedece a ninguna causa; pero si este exhíbit rige, tienen necesariamente que caducar los cuatro pagarés que son los que precisamente le dieron existencia y validéz. Por tanto, hay novación de contrato.

Como consecuencia de la novación—dice Scaevola—deja de existir el deber de cumplir lo primeramente convenido, a cambio del de realizar lo que se pactó más adelante. (19 Scaevola, 1041.)

Cuanto a la defensa fundada en la moratoria. La ciudad de Manila ha sido liberada de la ocupación enemiga en 10 de marzo de 1945, según Proclama No. 6 del Presidente de la Mancomunidad (41 Off. Gaz., 76). El demandado podía acogerse a las disposiciones de la orden de moratoria No. 25, pero no a las de la orden enmendatoria No. 32, la cual expresamente dispone que "Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential

Proclamation that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government." (41 Off. Gaz., p. 56.)

El Exhíbit A, otorgado después de la liberación de Manila, está incluido en la excepción, y comprendido en la expresión "monetary obligations entered into" en Manila después de su liberación. Ultimamente, la moratoria ha sido reformada por la ley de la República No. 342, y el demandado, a juzgar por los escritos obrantes en autos, tampoco puede acogerse a sus disposiciones.

En la demanda presentada en esta causa el demandante reclamaba solamente el pago de la primera anualidad vencida, o sea, la de ₱3,500; en su alegato, reclama ya ₱10,500 correspondientes a tres plazos, y la cantidad de ₱3,500 para cuando venciese el cuarto. Solo puede reclamarse el pago del plazo vencido y no pagado al tiempo de la presentación de la demanda. (Cía. Gral. de Tabacos *contra* Araza, 7 Jur. Fil., 471.) Cuanto a los tres plazos ya vencidos pero que no habían aún vencido al tiempo de presentarse la demanda, no puede reclamarse aunque se presente una demanda suplementaria. (Limpangco *contra* Mercado y otro, 10 Jur. Fil., 515.) Pero ultimamente en Ramos et al. *contra* Gibbon et al., (39 Gac. Of., 241), este Tribunal, para evitar multiplicidad de acciones, declaró que el Juzgado *a quo* no abusó de su sana discreción al admitir la segunda demanda enmendada que pedía el pago del tercer plazo que, al presentarse la demanda, no era exigible aún. Es práctica bien establecida—dijo este Tribunal en Moya contra Barton (45 Off. Gaz., 237)—el evitar multiplicidad de acciones que "es odiosa ante la ley y no se permite ni en equidad ni en justicia."

Es infundada la petición del demandante en cuanto a honorarios de abogado, porque no existe nada estipulado sobre los mismos en el Exhíbit A.

Se revoca la orden de sobreseimiento. Se ordena la devolución del expediente al Juzgado de origen para que se dicte sentencia de acuerdo con nuestro criterio en las cuestiones planteadas. Los apelados pagarán las costas.

Moran, Pres., Ozaeta, Parás, Bengzon, Tuason, Montemayor, y *Reyes, MM.*, están conformes.

Se revoca la orden y se ordena la devolución del expediente al Juzgado de origen.

[No. L-2475. September 21, 1950]

FRANCISCO OSORIO, plaintiff and appellee, *vs.* ESTEBAN SALUTILLO and SANTAS DE SALUTILLO, defendants and appellants.

1. OBLIGATIONS AND CONTRACTS; ARTICLE 1127, CIVIL CODE; TERM FIXED IN OBLIGATIONS PRESUMED FOR BENEFIT OF DEBTOR AND CREDITOR.—Article 1127 of the Civil Code provides "When-

ever a term is fixed in obligations it is presumed as established for the benefit of the creditor and the debtor, unless from their tenor or some other circumstances, it should appear that it has been established for the benefit of one or the other." According to this provision, the term is presumed to be for the benefit of both debtor and creditor, and therefore, the debtor cannot make payment before the time stipulated, without the consent of the creditor. The presumption, of course, is rebuttable.

2. BILATERAL CONTRACTS.—It is maintained that since the loan is payable without interest, payment before the time stipulated would not harm the creditor. However, one of the conditions stipulated for the loan is, as above stated, that during the term or existence of the mortgage, the creditor shall have possession of the two parcels of land mortgaged, and will clean them, taking charge of the harvesting of the nuts from the coconut trees, and of the making of the copra, and that for his services, he will be given 70 per cent of the net proceeds of the sale of the copra. Plaintiff himself alleges, in paragraph 6 of his complaint, that the compensation thus stipulated in behalf of the creditor, takes the place of the interest of the loan. And, according to the deed Exhibit A, this compensation is one of the conditions stipulated for the loan. The contract, therefore, is bilateral and, without the consent of the creditor, payment cannot be made before the date fixed by the parties.

APPEAL from a judgment of the Court of First Instance of Davao. Fernandez, J.

The facts are stated in the opinion of the court.

Joaquin & Benedicto for appellants.
Arsenio Suazo for appellee.

MORAN, *C. J.*:

This is an appeal, upon a question of law, taken by the defendants from a judgment rendered by the Court of First Instance of Davao, in favor of the plaintiff.

According to Exhibit A, plaintiff on May 27, 1947, took from the defendants a loan of ₱6,000 payable without interest, on May 27, 1952. Payment was guaranteed by a mortgage on real property. The contract contained the following stipulation:

"The conditions of this mortgage are as follows; to wit:

* * * * * * *

"*The other condition* is such that due to the fact that I am so busy and preoccupied with the cultivation of another properties during the term or existence of this mortgage the mortgagee, Mr. Esteban Salutillo shall take possession of the two parcels herein mortgaged, and to take charge of the cleaning of the land, and the harvesting on the nuts from the coconut trees planted thereon and the making of coprax. And for his services in managing the land during the existence of the mortgage, we do hereby agree that after deducting all the expenses in the clearing, harvesting and making of coprax which will all be charged to my account (mortgagor) seventy per cent of the net proceeds from the sale of the coprax shall be the share of the mortgagee (Esteban Salutillo), while the remainder of thirty per cent shall be my share." (Italics ours.)

On or before March 31, 1948, plaintiff offered to pay the loan, but upon defendants' refusal to accept payment, a complaint was filed and the sum of ₱6,500 was consigned in court. The only question is whether or not, under the terms of the contract, the loan may be paid on or before March 31, 1948. The court rendered judgment holding the contract to be unilateral, and that the period therein fixed for payment of the loan is for the benefit of the debtor, who, for that reason, may make payment before May 27, 1952.

This judgment is wrong. The contract of loan expressly stipulates that payment shall be made on May 27, 1952. Article 1127 of the Civil Code provides that—"Whenever a term is fixed in obligations it is presumed as established for the benefit of the creditor and the debtor, unless from their tenor or some other circumstances, it should appear that it has been established for the benefit of one or the other." According to this provision, the term is presumed to be for the benefit of both debtor and creditor, and, therefore, debtor cannot make payment before the time stipulated, without the consent of the creditor. The presumption, of course, is rebuttable.

It is maintained that since the loan is payable without interest, payment before the time stipulated would not harm the creditor. However, one of the conditions stipulated for the loan is, as above stated, that during the term or existence of the mortgage, the creditor shall have possession of the two parcels of land mortgaged, and will clean them, taking charge of the harvesting of the nuts from the coconut trees, and of the making of the copra, and that for his services, he will be given 70 per cent of the net proceeds of the sale of the copra. Plaintiff himself alleges, in paragraph 6 of his complaint, that the compensation thus stipulated in behalf of the creditor, takes the place of the interest of the loan. And, according to the deed Exhibit A, this compensation is *one of the conditions* stipulated for the loan. The contract, therefore, is bilateral and, without the consent of the creditor, payment cannot be made before May 27, 1952.

Judgment is reversed, and defendants-appellants are hereby absolved, with costs against appellee.

Ozaeta, Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Judgment reversed.

[No. L-2526. September 21, 1950]

TOMAS MAPUA ET AL., petitioners, *vs.* SUBURBAN THEATERS, INC., respondent

1. APPEAL AND ERROR; FORCIBLE ENTRY AND DETAINER; AMENDMENT OF COMPLAINT; CHANGE OF THEORY ON APPEAL; DAMAGES.—In an action for unlawful detainer with damages, on appeal to

the Court of First Instance the complaint may be amended so as to increase the damages claimed. This amendment cannot be considered as a change of the cause of action in the justice of the peace court.

2. PLEADING AND PRACTICE; AMENDMENT OF COMPLAINT; MOTION TO DISMISS; APPEAL AND ERROR; ERRORS THAT MAY BE CORRECTED ON APPEAL; DAMAGES; NEW TRIAL.—If on motion to dismiss, the amendment is disallowed in the Court of First Instance, and the plaintiff amended his complaint to conform it to the damages claimed in the justice of the peace court, but expressly reserving his right to attack on appeal the correctness of the court's ruling, said ruling may be corrected on appeal, and the case remanded so that plaintiff may offer proof as to the increased damages.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Federico Agrava for petitioners.
Jose O. Vera and *Antonio L. Gregorio* for respondent.

MONTEMAYOR, *J.:*

On June 24, 1941, plaintiffs Tomas Mapua et al. leased to the defendant Suburban Theaters, Inc. the building named Cine Apolo situated at 1348 Rizal Avenue, City of Manila, for a period of three years beginning July 1, 1941, extendible to another three years with rental at the rate of ₱700 a month. The stipulation regarding extension reads as follows:

"El término del arrendamiento es de tres años, a partir del día 1.º de Julio de 1941, prorrogable a otros tres años a opción de ambas partes, mediante notificación por escrito dos meses antes de la expiración de este contrato."

It seems that in spite of the expiration of the period of three years in 1944, the defendant entity continued in possession of the Cine Apolo paying the sum of ₱1,000 a month as rental. Because of the extension which said entity had been asking for from time to time, by a letter (Exhibit B) dated May 28, 1945, addressed to Francisco Santa Maria, manager of the defendant company, plaintiff Tomas Mapua stated that in confirmation of the conversation had between him and a representative of the defendant, the owners of the Cine Apolo had agreed to again extend the term of the lease until June 30, 1945, warning him however that said owners beginning July 1, 1945, were going to take over the management of the cine for which reason he (Santa Maria) was requested to vacate the building before that date.

In answer to said letter, Atty. Jose O. Vera, counsel for the defendant wrote the letter (Exhibit C) dated June 3, 1945, expressing the gratitude of the members of the Suburban Theaters Inc. for the extension of one month given, at the same time praying that said entity be per-

mitted to continue with the lease, pleading in support of said prayer the fact that said entity had been the lessee of the plaintiffs for about 20 years, paying regularly the rentals due, even of its own initiative increasing said rental when its business so justified. He insinuated the readiness of the defendant entity to perhaps increase the rentals as may be gleaned from the following portion of his letter which we quote:

"* * * Debido a la destrucción enorme de tropas Americanas, se nota una alza enorme en los alquileres y un ingreso mayor en las taquillas de cines y teatros. Esto, sin embargo, es artificial y pasajero, como Ud. comprende. * * *

"Representantes de la corporación se verán con Ud. portando esta carta. Creo que la cuestión de los alquileres al tenor de los tiempos se puede arreglar satisfactoriamente. Ojala, asi suplico, merezcan favorable consideración."

The parties, however, would appear to have failed to come to an agreement about a further extension, for on July 9, 1945, the plaintiffs filed a complaint in the Municipal Court of Manila for ejectment asking that the defendant be ordered to vacate the building, Cine Apolo, and to pay ₱1,000 representing the rental due for the month of July, 1945, plus the rentals from August, 1945, until the defendant vacated the premises. After hearing, the municipal court dismissed the complaint without pronouncement as to costs, upholding the contention and theory of the defendant that the period of lease had been extended from July 28, 1944 for another three years.

The plaintiffs appealed to the Court of First Instance where instead of reproducing their complaint in the municipal court, they filed an amended complaint dated October 11, 1945, with the prayer that the defendant be ordered to vacate the premises and to pay the rentals of ₱1,000 a month from July to October, 1945, and the sum of ₱10,000 as the reasonable compensation for the use and occupancy of the building from November, 1945, until defendant finally vacated the same. Acting upon a motion of defendant-appellee to dismiss the amended complaint on the ground that it alleged a cause of action not raised in the lower court, the Court of First Instance of Manila by order of November 2, 1945, granted said motion to dismiss, at the same time giving the plaintiffs five days within which to amend their amended complaint. Plaintiffs duly excepted to said ruling on November 6, 1945, and on the same date, filed their second amended complaint in which the prayer for rental was limited to ₱1,000 a month corresponding to July, 1945, and such other rentals as have become due and demandable until defendant finally vacated the building.

After hearing, in a decision dated May 15, 1946, the trial court found that after the period of the lease expired, the lease had been tacitly extended from month to month as

provided for in article 1581 of the Civil Code and ordered the defendant to vacate the Cine Apolo, and to pay ₱1,000 a month from July, 1945 until the building was vacated. The plaintiffs appealed from the order of the trial court of November 2, 1945 dismissing their amended complaint as well as from that portion of the decision of the trial court which fixed at ₱1,000 a month the reasonable compensation for the use and occupation of the Cine Apolo. The defendant also appealed from the decision, contending that the lower court erred in interpreting the contract as having been extended from month to month instead of the agreed extension period of three years.

Both appeals eventually reached the Court of Appeals. As regards the appeal of plaintiffs, involving as it did only questions of law, it was indorsed or elevated to the Supreme Court where it was docketed under G. R. No. L–797.

Pending consideration of the appeal in the Court of Appeals, that Tribunal was advised on July 7, 1947, that appellant Suburban Theaters Inc. had already vacated the Cine Apolo, the building in question on June 30, 1947. Ruling that the main question submitted in the appeal has already become moot, the Court of Appeals by a resolution promulgated on June 25, 1948, dismissed the case without pronouncement as to costs.

Counsel for the plaintiffs on June 30, 1948, moved for a reconsideration of the said resolution asking for a clarification of the same with a statement that the decision of the lower court had been affirmed, and that defendant's appeal has been dismissed because the question thus raised has become moot; or that a decision on the merits of defendant's appeal be made. No action seems to have ever been taken on that motion. Then, on June 24, 1948, the Supreme Court in G. R. No. L–797, which was the appeal of the plaintiffs elevated to it by the Court of Appeals, promulgated a resolution returning said appeal to the Court of Appeals on the ground that the appeal from the order of November 2, 1945 was merely an incident in the appeal from the judgment of May 15, 1946, and could not be prosecuted independently or separately from the latter, and inasmuch as the appeal from the judgment of May 15, 1946 involved questions of fact and law, it must be taken cognizance of by the Court of Appeals.

Considering both appeals of the plaintiffs and the defendant, the Court of Appeals on September 15, 1948, promulgated a decision wherein it held that the trial court did not err in dismissing the plaintiffs' amended complaint dated October 11, 1945, and in limiting the monthly rental of the building in question to ₱1,000 for the entire period of unlawful detainer for the reason that in the opinion of said appellate tribunal the amended complaint com-

pletely changed the theory and the nature of the cause of action in the municipal court. Reiterating its opinion contained in its resolution of June 25, 1948, it again dismissed the case on the ground that the principal question raised by the defendant in its appeal had become moot.

The plaintiffs as petitioners have now filed the present petition for certiorari to review said decision of the Court of Appeals.

The first question to be determined is whether after reamending their amended complaint of October 11, 1945, so as to conform to the one filed in the municipal court, because of the adverse order of the trial court of November 2, 1945, the plaintiffs may still on appeal question the legality and propriety of the trial court's order dismissing their amended complaint. It will be recalled that plaintiffs duly excepted to the order of the court and as shown by the record of the case, in open court they reserved their right to question the said ruling on appeal.

While in some jurisdictions, it is a rule that a waiver of an exception to an adverse ruling on a demurrer results when the demurrant pleads over and goes to trial on the merits, other jurisdictions follow the rule that the right to a review of a ruling on a demurrer to a pleading cannot be denied because the complaining party goes to trial, takes proof, and a verdict and judgment result. (3 Am. Jur., 54.)

We believe and hold that the sound rule to be followed in our jurisdiction and under our law is that when a demurrer to a complaint (motion to dismiss) is sustained, (under the new Rules of Court, demurrer has been eliminated and in its place we now have the motion to dismiss,—Rule 8), the plaintiff may except to the court's ruling if he wishes, although now, exception is no longer necessary, reserve his right to have said ruling reviewed on appeal and amend his complaint so as to conform to the order of the court. By so doing and by pleading over he does not lose his right to appeal from the ruling.

"As a general rule, if a party, after an order or judgment upon demurrer to pleadnigs is given against him, under leave of court, amends the pleading demurred to, or substitutes another therefore so as to remove the grounds of the demurrer, he acquiesces in the judgment or order upon the demurrer, and will not be permitted to appeal therefrom, or, *unless an exception is duly saved, to assign it for error in the appellate court,* * * *." (4 C. J. S., 399.)

We then come to the principal legal point in issue-whether the amended complaint of the plaintiffs filed by them of October 11, 1946, was admissible and did not violate any rule of good pleading and practice.

There is no dispute as to the rule that the parties on appeal to the Court of First Instance may not in their

pleadings therein change the nature of the cause of action raised and pleaded in the inferior court. Did the plaintiffs in their prayer in their amended complaint asking for the payment by the defendant of ₱10,000 a month as the reasonable compensation for the use and occupancy of the theater from November 1, 1945, until defendant vacated the premises change the cause of action raised in the municipal court where they asked for only ₱1,000 a month as rental from July 1, 1945, plus the rentals that may be due for August, 1945 until the premises were restored to them? We do not think so. Almost invariably, a complaint in ejectment or unlawful detainer is accompanied by a prayer for the payment of rentals, reasonable compensation for the use of the property or damages, depending upon whether there was a contract or agreement between the plaintiff and the defendant as to the amount to be paid for the use of the premises or whether there was no such agreement for the reason that the premises were being illegally detained. In either case, whether the amount involved is denominated rental or reasonable compensation for use, it is the amount to be found by the court on the basis of the evidence, as justly due to the plaintiff for the occupation of the property leased or detained, a sum called rental when agreed upon by the parties, and reasonable compensation or damages in the absence of such agreement. In the present case we should bear in mind that according to the complaint in the municipal court the plaintiffs had demanded the return of the premises to them by the defendant since June, 1945. In other words, beginning with July of that year there no longer was a lease agreement between the parties and that from the point of view of the plaintiffs the defendant was illegally detaining the building. There could therefore have been no agreement between the parties as to rentals for the use of the building detained. The plaintiffs in their original complaint choose to demand only the amount of ₱1,000 per month beginning with the month of July until the building was restored to them and called that amount "rental". They could equally have demanded more than ₱1,000 and called it "reasonable compensation" for the use of the premises.

The idea that we wish to convey is that the amount demandable and recoverable from a defendant in ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and as admitted in respondent's brief, p. 10, is merely incidental thereto. In the present case, the cause of action in the municipal court was the alleged detainer of the building by the defendant after the expiration of the period of the lease and after the plaintiffs had refused

with due notice to continue with the month to month tacit extension of the lease. The amount to be paid by the defendant for such illegal use and as demanded by the plaintiffs, was merely an incident to and flows from the cause of action. From this, it should be clear that by filing an amended complaint on appeal in the court of first instance and praying for payment by the defendant for the detainer or illegal occupation of the theater after July, 1945, a monthly rental of ₱1,000 from July 1st to October 31st and the sum of ₱10,000 a month from November 1st as reasonable compensation for the occupancy of the theater, the complaint did not change the cause of action raised in the municipal court. It merely increased the amount payable and collectible from the defendant flowing from the same cause of action raised in the municipal court. The following authorities are pertinent.

In the case of Merrill *vs.* Marietta Torpedo Company, involving a judgment in plaintiff's favor in an action to recover damages for injuries, appealed to the West Virginia Supreme Court of Appeals, we quote a pertinent portion of the appellate tribunal's decision:

"Plaintiff was permitted to amend his declaration, and did so by adding thereto five additional counts, and by enlarging his damages to $20,000, instead of $10,000, as in his original declaration: and the overruling of defendant's demurrer to the amended declaration is assigned as error. It is insisted that it in effect alleges a new cause of action. The amended counts simply describe with more particularity the manner in which the injury occurred than was done in the original declaration. It was clearly no departure from the original declaration, either in respect to the averments of defendant's duty in the premises, or the acts of negligence complained of. The amendment is beneficial rather than prejudicial to the defendant, because it more certainly informs it of the particular acts of negligence which plaintiff expected to prove. *Increasing the damages certainly constituted no new cause of action.* Courts are very liberal in allowing a plaintiff to amend so long as there is no departure from the original cause of action. There is no departure in this case. *Increasing the amount of damages is not a departure.* Bentley *vs.* Standard F. Ins. Co., 40 W. Va., 729; 23 S. E., 584; Clarke *vs.* Ohio River R. Co., 39 W. Va., 732; 20 S. E., 696; and Hoggs, Pl. & Forms, sec. 190, note 5." (L. R. A., 1917–F, p. 1047.)

In the case of Hall *vs.* Pennsylvania Railroad Company, a cross appeal from a judgment of the Court of Common Pleas for Philadelphia County to the Pennsylvania Supreme Court, involving recovery of damages for unlawful discrimination in freight rates, the appellate court ruling on the question whether an amendment to a complaint increasing the amount of damages sought was equivalent to setting up a new cause of action, said:

"The action of the court below in the present case makes it clear that no treble damages were included in the verdict, and the question, therefore, is whether the amendment offered at the trial, followed by the motion for treble damages, sets up a new cause

of action which was barred by the Statute of Limitations, because the claim was not made within six years following the time the fraud was discovered in September, 1905. The proposed amendment of April 18, 1913, increases the damages claimed in the first paragraph of the statement of claim to $400,000. *This additional damage claimed is not by virtue of a distinct cause of action, but merely increases the amount of plaintiff's claim for the cause already alleged in the original statement.*" (L. R. A., 1917–F, p. 418.)

In this connection we may add that amendments to pleadings are favored and should be liberally allowed in the furtherance of justice (Torres *vs.* Tomacruz, 49 Phil., 915). The end to be achieved in such liberality is to determine all the differences and matter in dispute in the action between the parties in a single proceeding, to avoid multiplicity of suits. Rule 17, section 2 of the Rules of Court clearly embodies this theory.

Another question that may be asked is whether a change in the amount collectible from the defendant, especially an increase is reasonable. If circumstances justify the change or increase, there can be no valid objection. One must bear in mind that damages or reasonable compensation in illegal detainer are continuing and changeable in nature. The allegations in the complaint in the municipal court in an ejectment case are naturally based on the circumstances and conditions then obtaining. But such conditions may have radically changed by the time the appeal reaches the court of first instance. The tax assessment may have been materially increased, even doubled with the corresponding increase in real estate taxes. New taxes may have been imposed not only on the property involved but also on the business of the owner of said property, such as the tax on real estate dealers who give out lots or buildings or both for rent. All these, may justify an increase in the reasonable compensation for the use of property. Were the plaintiff on appeal to be precluded from amending his complaint so as to increase the amount of his demand for the use of his property, what remedy would remain to him? Must he and could he bring another action to collect the increase? Plaintiffs may not be accused of mistake or negligence in limiting their claim in the original complaint to ₱1,000 a month because they could not perhaps without departing from the truth ask for more than what the conditions and circumstances obtaining at the time that he filed his complaint in the municipal court warranted.

"The assessment of damages is usually governed by the situation or condition of affairs existing at the time the action is brought; hence for a recovery of loss or damages occurring thereafter plaintiff should amend or file a supplementary petition." (17 C. J., 1000.)

But this rule we are now laying down is not for the benefit of the plaintiff in every case. It may equally accrue

to the benefit of the defendant. A change in conditions may be just the reverse. By the time the appeal reaches the Court of First Instance, similar new properties and buildings may have been made available for lease and occupancy. Taxes may have been reduced, or even eliminated. The business for which the property involved was devoted may have decreased, gone down or deteriorated so as to work a radical reduction of the reasonable compensation for its occupancy. Surely, at the trial, the defendant occupant may take advantage of and plead this change in conditions so as to substantially reduce the amount collectible from him.

Anent this proposed increase in the reasonable compensation for the use of the Cine Apolo, we may recall that according to Atty. Jose O. Vera himself, speaking as a lawyer for the defendant, through his letter (Exhibit C), after liberation due to the great destruction of buildings in Manila, during the battle of liberation, there was an enormous increase in building rentals and box office receipts in movie houses (like Cine Apolo), and he intimated that an increase in the rental of the building could be satisfactorily arranged. The increase proposed by the plaintiffs was therefore nothing new to the defendant, nor was it a surprise to it in the matter of its defense. As a matter of fact, as emphasized by petitioners in their brief, the increase was intended to commence and become due only on November 1, 1945, more than half a month from the filing of the amended complaint on October 13, 1945. There seems to be no inequity or unfairness in the whole arrangement. As to the amount of the increase, that is entirely a matter of evidence to be submitted at a new trial by both parties.

In conclusion, we hold that in a case of unlawful detainer or ejectment appealed to the Court of First Instance, the plaintiff may amend his complaint so as to increase the amount sought by him as reasonable compensation or damages for the use and occupation of his premises detained, over and above that claimed by him in his complaint in the municipal or justice of the peace court. When a motion to dismiss such amended complaint is sustained and granted by the trial court, and the plaintiff pleads over, amends his amended complaint so as to conform to the order of the court and goes to trial, he may still on appeal question the validity and correctness of said order of the trial court, especially if he has made of record his non-acquiescence in said ruling or order and his intention to have the same reviewed on appeal.

In view of the foregoing, we set aside the order of the trial court of November 2, 1945 and reverse its decision of May 15, 1946, in so far as it limits to ₱1,000 the amount payable to the plaintiffs petitioners for the use and occu-

pancy of the Cine Apolo from November 1, 1945, until the building was vacated by the defendant; in all other respects said decision is affirmed. The decision of the Court of Appeals is reversed in so far as it holds that the trial court did not err in dismissing plaintiffs' amended complaint of October 11, 1945, and in limiting the monthly rentals of the building in question to ₱1,000 for the entire period of unlawful detainer. In all other respects said decision is affirmed.

Let this case be returned to the trial court for a new trial for the reception of evidence regarding the reasonable compensation for the use and occupancy of the building, Cine Apolo, from November 1, 1945 until it was vacated by the defendant. Thereafter, the trial court will render decision on the basis of said evidence fixing said amount to be paid the plaintiff by the defendant, said decision to form part of the decision already rendered on May 15, 1946. Respondent shall pay costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and *Reyes, JJ.,* concur.

Case remanded for new trial.

[No. L-3581. September 21, 1950]

JAMES MCGUIRE, plaintiff and appellee, *vs.* THE MANUFACTURERS LIFE INSURANCE CO., defendant and appellant.

1. REMEDIAL LAW; STIPULATION OF FACTS, RELIEF FROM.—It is error for the trial court to set aside a stipulation of fact made by the parties in the absence of any petition for relief therefrom on the ground of error or fraud.
2. LIFE INSURANCE; REINSTATEMENT OF POLICY.—The stipulation in a life insurance policy giving the insured the privilege to reinstate it upon written application within three years from the date it lapses and upon production of evidence of insurability satisfactory to the insurance company and the payment of all overdue premiums and any other indebtedness to the company, does not give the insured absolute right to such reinstatement by the mere filing of an application therefor. The company has the right to deny the reinstatement if it is not satisfied as to the insurability of the insured and if the latter does not pay all overdue premiums and all other indebtedness to the company. After the death of the insured the insurance company cannot be compelled to entertain an application for reinstatement of the policy because the conditions precedent to reinstatement can no longer be determined and satisfied.
3. ID.; NONPAYMENT OF PREMIUMS TERMINATES CONTRACT OF INSURANCE.—As held in Lopez de Constantino *vs.* Asia Life Insurance Company, and Peralta *vs.* Asia Life Insurance Company, G. R. Nos. L-1669 and L-1670, the payment of premiums on a life insurance policy is not suspended by war. The United States rule which declares that the contract of insurance is not merely suspended, but is abrogated by reason of nonpayment of premiums, since the time of the payments is peculiarly of the essence of the contract, is adopted in this jurisdiction.

APPEAL from a judgment of the Court of First Instance of Samar. Benitez, J.

The facts are stated in the opinion of the court.

Camus, Zavalla, Bautista & Nuevas for appellant.
Vicente C. Santos for appellee.

OZAETA, *J.:*

This case was submitted to and decided by the Court of First Instance of Samar upon a stipulation of facts, from which it appears that:

On August 18, 1932, the defendant issued an insurance policy on the life of Jaime McGuire for the sum of $5,000, and an additional sum of $5,000 as double indemnity accident benefit, payable to the plaintiff as beneficiary. The insured paid the premiums on said policy up to and including that due on July 19, 1940. On June 22, 1940, the insured secured from the defendant a loan of $760 on said insurance policy. The insured failed to pay the loan with the interest thereon on January 1, 1941, when it became due, or on any other date thereafter. He likewise failed to pay the premiums which fell due on July 19, 1941, as well as those payable thereafter. Paragraphs 6, 7, and 8 of the stipulation of facts read as follows:

"(6) That upon the default of the insured to pay the premiums due on July 19, 1941, and subsequent ones, the defendant insurance company applied the stipulation contained in clause 8 (Automatic Premium Loan) of the provisions of the policy Exhibit A and said policy was carried on under said nonforfeiture clause of the policy up to and including March 1, 1942, the date said policy lapsed, as shown in the letter of the defendant company of January 17, 1946, to plaintiff, a copy of which is hereto attached, marked Exhibit B and is made a part hereof;

"(7) That the insured Jaime McGuire died on August 4, 1943, in a motorcycle accident at Borongan, Samar, Philippines;

"(8) That during the interim period between March 1, 1942, the date the policy lapsed, to August 4, 1943, the date of the death of the insured, the insured attempted to reinstate the policy under the stipulation contained in clause 3 of the 'Provisions' of the same but his attempts failed because of his inability to communicate with defendant's branch office at Manila due to the then existence of war and the occupation of the Philippines by enemy forces from January 1, 1942, to February, 1945."

Upon those facts the trial court rendered judgment in favor of the plaintiff, adjudging the defendant to pay to him the sum of ₱20,000, minus the premiums due and unpaid up to the date of the death of the insured, with legal interest thereon from the date of the filing of the complaint, and the costs.

The trial court considered erroneous paragraph 6 of the stipulation of facts above quoted to the effect that the policy in question lapsed on March 1, 1942, for failure to pay the premiums due thereafter on account of the war, the trial court being of the opinion that the war legally

suspended the obligation of the insured to pay the premiums up to the time of the death of the insured, which occurred during said war, citing the decision of the Court of Appeals to that effect in Gubagaras *vs.* West Coast Life Insurance Company, CA–G. R. No. 1628, January 6, 1949.

According to the complaint, plaintiff's theory is that, although the policy lapsed on March 1, 1942, the insured had the privilege of reinstating it so as to keep it in force up to the time of his death upon a written application within three years from the date of lapse and upon production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company, but that the insured was unable to exercise that privilege because of the war. Adopting another theory, the trial court held that it was unnecessary for the plaintiff to invoke the reinstatement clause of the policy because it had not lapsed inasmuch as the failure to pay the premiums was due to the war.

Plaintiff's theory is untenable. Even if the insured had applied for reinstatement within three years after the policy had lapsed, his right thereto was not absolute under the terms of the policy but discretionary on the part of the insurance company, which had the right to deny the reinstatement if it was not satisfied as to the insurability of the insured and if the latter did not pay all overdue premiums and all other indebtedness to the company. After the death of the insured the insurance company could not be compelled to entertain an application for reinstatement of the policy because the conditions precedent to reinstatement could no longer be determined and satisfied.

Aside from the error of the trial court in *motu proprio* setting aside the stipulation of fact that the policy had lapsed on March 1, 1942, its theory that the payment of premiums was legally suspended during the war is contrary to the decision of this court of August 31, 1950, in Lopez de Constantino *vs.* Asia Life Insurance Company, and Peralta *vs.* Asia Life Insurance Company, G. R. Nos. L–1669 and L–1670. In those cases we rejected the New York rule which holds that war between states in which the parties reside suspends the contract of life insurance and that, upon tender of all premiums due by the insured or his representative after the war has terminated, the contract revives and becomes fully operative; and adopted the United States rule which declares that the contract is not merely suspended, but is abrogated by reason of nonpayment of premiums, since the time of the payments is peculiarly of the essence of the contract. Speaking thru Mr. Justice Bengzon, this court, after a review of various pertinent cases, further said:

"After perusing the Insurance Act, we are firmly persuaded that the nonpayment of premiums is such a vital defense of insurance companies that since the very beginning, said Act 2427 expressly

preserved it, by providing that after the policy shall have been in force for two years, it shall become incontestable (*i. e.*, the insurer shall have no defense) except for fraud, *nonpayment of premiums*, and military or naval service in time of war (sec. 184 [b], Insurance Act). And when Congress recently amended this section (Rep. Act 171), the defense of fraud was eliminated, while *the defense of nonpayment of premiums was preserved.* Thus the fundamental character of the undertaking to pay premiums and the high importance of the defense of nonpayment thereof, was specifically recognized."

We reiterate the doctrine laid down in the Asia Life Insurance Company cases above cited.

It appears that the insured in the present case has used up all the reserve value of the policy in question thru loans in cash and the application of the nonforfeiture clause by keeping the policy subsisting until March 1, 1942.

Reversing the judgment appealed from, we absolve the defendant-appellant fom the complaint, with costs.

Moran, C. J., Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Judgment reversed.

[No. L-4033. September 21, 1950]

MARCELO STEEL CORPORATION ET AL., petitioners, *vs.* THE IMPORT CONTROL BOARD ET AL., respondents. WILLIAMS INTERNATIONAL LTD., ET AL., intervenors.

1. MANDAMUS; IMPORT CONTROL BOARD; POWER OF COURTS; FORFEITURE OF GOODS ILLEGALLY IMPORTED.—Courts have no power to order the Commissioner of Customs to confiscate goods imported in violation of the Import Control Law, Republic Act No. 426, as said forfeiture is subject to the discretion of the said official.
2. ID.; ID.; GOODS IMPORTED IN GOOD FAITH UPON ADVICE OF IMPORT CONTROL BOARD.—If an importer imports goods believing in good faith in the ruling of Import Control Commissioner that said goods are not subject to control, but after said goods have been imported, the said Import Board ruled that similar goods are subject to control, *Held:* There is sufficient excuse for refusal of defendant officials to impound the imported articles.
3. ID.; THE ISSUANCE OF THE WRIT OF MANDAMUS IS DISCRETIONARY AND TO PREVENT FAILURE OF JUSTICE.—"As a general rule mandamus is not a writ of right and its allowance or refusal is a matter of discretion to be exercised on equitable principles and in accordance with well-settled rules of law"; and that "it should never be used to effectuate an injustice, but only to prevent a failure of justice."

ORIGINAL ACTION in the Supreme Court. Mandamus with preliminary injunction.

The facts are stated in the opinion of the court.

Manuel O. Chan, Javier & Javier and *Garcia & Martin* for petitioners.

Solicitor General Felix Bautista Angelo and *Solicitor Ramon L. Avanceña* for respondents.

Sayo & Saura for intervenor-respondent Saura Import & Export Co., Inc.

M. Bello and *Floro Crisologo* for intervenor-respondent Co Ban Ling & Sons Co., Inc.

Quijano, Alidio & Azores for intervenor-respondent Williams International, Ltd.

BENGZON, *J.:*

The petitioners, Philippine manufacturers of nails, ask for mandamus ordering respondents to confiscate or impound for purposes of forfeiture about 11,475 kegs of nails recently imported from Japan and Hongkong by the intervenors. They allege that such kegs were landed in violation of the Import Control Law, and that if released into the local market will prejudice their financial interests and investments.

The respondents are the Import Control Board, the Honorable Guillermo Gomez as Import Control Commissioner and the Honorable Alfredo Jacinto as Acting Commissioner of Customs. These aver that the nails are galvanized iron nails; that before ordering the said nails the intervenors asked the opinion of the Import Control office on the point whether said nails were subject to control; that the then Import Control Commissioner (Rufino Luna) ruled that such nails were not controlled because they were different from "common wire nails" enumerated in the Control Law; that these nails were imported in accordance with the ruling of the said Import Control Commissioner; that subsequently, heeding repeated protests of local nail factories, the present Import Control Board passed a resolution declaring that galvanized iron nails should be considered as common wire nails subject to control; that the said Board and the other respondents believe this new ruling should not apply to the nails in question, which were imported in good faith in accordance with the ruling of the Import Control Commissioner declaring galvanized iron nails as free from control. The respondents consequently pray for dismissal of this petition, with costs.

Given permission to take part in this proceeding, the intervenors join the respondents as to the allegations of importation in good faith and reliance on the ruling of Import Control Commissioner Luna; but they maintain that the nails are galvanized iron nails—not common wire nails subject to the regulations of the Import Control Law. Some of the intervenors interposed other defenses, which, in the view we take of the controversy do not need to be stated in detail.

At the oral argument the discussion centered around the question whether "galvanized iron nails" were "common wire nails". Petitioners had the burden to show the affirmative, because the Import Control Law speaks of "common wire nails", and not galvanized iron nails. The respondents introduced a report of the Bureau of Science to the effect that the nails submitted for analysis (samples of

the disputed hardware) "are galvanized iron nails." However, the report does not affirm that the nails *are not common wire nails.* On the other hand, the petitioners offered some catalogs advertising nails of various classes. In size and form the intervenors' nails look like the common wire nails advertised therein. However, the same catalogs either charge extra prices for "galvanizing" the nails (Exhibit D, Wickwire Brothers, p. 71) or quote special prices for galvanized wire nails (Exhibit C, American Steel & Wire Company, p. 10).

The end of the hearing found us with no definite impression that petitioners had established their case, what with the undeniable fact that the purpose of the control law was to protect local industry, and "galvanized iron nails" were not and are not manufactured in this country. The petitioners proved, at most, that galvanized iron nails are common wire nails *with the difference* that they are coated or plated with cadmium, zinc, lead or other base metals. With the further difference suggested by intervenors that because of such plating, they (galvanized iron nails) are used for certain purposes for which common wire nails are not suitable.

It is true that the Import Control Board recently decreed that "galvanized iron nails" should also be controlled. But such ruling might have been promulgated in the exercise of its power, under the law (Rep. Act No. 426), to place in the control list *other articles* or commodities (sec. 7, subsection 4, third paragraph). Hence it is not necessarily an acknowledgment that *as a matter of fact* "galvanized iron nails" are "common wire nails."

At any rate, supposing that galvanized iron nails are common wire nails within the meaning of the law, the opinion is unanimous in this court that this petition may not, or should not, be granted for the following reasons, in addition to others:

First. We have no power to order the confiscation of the nails, because under the last proviso of section 20 of the Import Control Law (Rep. Act No. 426) in connection with article 18, chapter 39 of the Revised Administrative Code, forfeiture of goods imported in violation of said law is subject to the discretion of the respondent Commissioner of Customs (*see* section 1365, Adm. Code). It is elementary that mandamus does not lie to compel performance of a discretionary duty.[1]

Second. All equities favor the intervenors. It is unquestioned that they ordered these nails believing in good faith in the ruling of Import Control Commissioner Luna that "galvanized iron nails" were not subject to control. There was reasonable ground for the ruling, and their

[1] Inchausti & Co. *vs.* Wright, (47 Phil., 866); Blanco *vs.* Board of Medical Examiners (46 Phil., 190); Moran, Rules of Court, Vol. II, p. 151.

belief. They placed the orders before the Import Control Board had decided that "galvanized iron nails" should be controlled like "common wire nails".

Wherefore, "if for no other reason than to honor and instill confidence in government commitments made through responsible officials"[2] the difference between "common wire nails" and "galvanized iron nails" however small, should be deemed sufficient basis and excuse for respondents' refusal to impound the questioned shipments.

And remembering that "as a general rule mandamus is not a writ of right and its allowance or refusal is a matter of discretion[3] to be exercised on equitable principles and in accordance with well-settled rules of law"[4]; and that "it should never be used to effectuate an injustice, but only to prevent a failure of Justice,"[5] this court should not compel respondents to forfeit the nails and thereby perform an act which they believe, and this court believes, would do violence to natural justice.

By this we do not mean that newly appointed officers or boards are bound to uphold or tolerate the erroneous resolutions of their predecessors. Occasions will undoubtedly arise when the interests of the public or other important considerations will demand immediate unqualified repudiation. But we are not aware this is one of them.

In view of all the foregoing, the petition is denied, with costs against petitioners. The injunction orders heretofore issued are hereby dissolved.

Moran, C. J., Ozaeta, Parás, Pablo, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Petition denied.

[No. L-2995. September 22, 1950]

CRISPULO F. ARNALDO and JULITA SARAYBA DE ARNALDO, petitioners, *vs.* JOSE BERNABE, Judge of First Instance of Cavite, BENIGNO T. SARAYBA, AMPARO SARAYBA, MIGUEL F. TRIAS, MARTINA SARAYBA and LUIS FERRER, Jr., respondents.

1. MORATORIUM LAW; PREWAR DEBTORS AND HAVING WAR DAMAGE CLAIMS EXCEPTED FROM THE LIFTING OF MORATORIUM LAW.—Republic Act No. 342 lifting the moratorium makes an exception of debtors who contracted their obligations before December 8, 1941, and who are war sufferers having a claim with the Philippine War Damage Commission.
2. ID.; PURPOSE OF LAW; NATURE OF CLAIM IMMATERIAL WHAT IS IMPORTANT IS THAT DEBTOR HAS WAR DAMAGE CLAIM.—What is important for the purpose of this exception is that a debtor has a

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[2] U. S. Tobacco Corporation *vs.* Luna, G. R. No. L-3875, promulgated July 6, 1950.

[3] 55 Corpus Juris Secundum, p. 25.

[4] 55 Corpus Juris Secundum, p. 29.

[5] Op. Cit., p. 33 citing many cases.

war damage claim, the source or nature of the claim being immaterial. The purpose of the law is to give the debtor a chance for rehabilitation.

3. MOTION "PRO-FORMA" DOES NOT STAY PERIOD TO APPEAL.—A motion for reconsideration is *pro forma* when it does not specify the findings or conclusions in the judgment which are not supported by the evidence or which are contrary to law but merely makes reference to the contents of a memorandum that had already been considered by the respondent court before rendering its judgment. Such motion cannot stay the period for taking an appeal.

ORIGINAL ACTION in the Supreme Court. Certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

Delgado & Flores for petitioners.
Vicente J. Francisco for respondents.

MORAN, *C. J.:*

This is a special civil action for certiorari with preliminary injunction filed by Crispulo F. Arnaldo and his wife, Julita Sarayba de Arnaldo, against the Court of First Instance of Cavite and others.

In 1936, respondent, Benigno T. Sarayba, filed an action against petitioner, Julita T. Sarayba de Arnaldo, for collection of a monetary obligation, this being one of the obligations which the latter assumed upon accepting a donation of paraphernal property made in her favor. After trial, judgment was renderd against the defendant on July 19, 1944. A motion for reconsideration which was subsequently filed, was destroyed together with the record of the case during the war of liberation. Such motion, however, was reconstituted and it appears to be predicated on the following grounds:

"1. That the findings of facts in the said decision is against the evidence presented in this case as explained in detail in the memoranda filed by the defendants in this case, to which the attention of this Honorable Court is respectfully referred, particularly to pages (here the corresponding numbers of pages follow) thereof;

"2. That, accordingly, the said decision is against the law.

"The above grounds will be amplified at the hearing of this motion."

On October 23, 1947, petitioners filed a motion to suspend the proceedings because of the moratorium law, and at the same time respondent Benigno T. Sarayba asked for the execution of the judgment alleging that the motion for reconsideration was *pro forma* and could not stay the running of the period to perfect an appeal, and, consequently, the judgment has become final and executory. No action has been taken on these motions and after almost one year, respondent Benigno T. Sarayba renewed his petition for the issuance of a writ of execution not only upon the ground that the motion for reconsideration was *pro for-*

ma but also because the moratorium law had been lifted. It appears, however, that Republic Act No. 342 lifting the moratorium makes an exception of debtors who contracted their obligations before December 8, 1941 and who are war sufferers having a claim with the Philippine War Damage Commission. Defendant Julita T. Sarayba contracted her obligation before December 8, 1941, and alleges having a claim pending with the Philippine War Damage Commission. Respondent court, however, granted the petition for a writ of execution, holding that the motion for reconsideration was *pro forma,* that the moratorium law had been lifted, and that claim was shown to have been filed by defendant Julita T. Sarayba with the Philippine War Damage Commission. Hence, this petition for certiorari.

We agree that the motion for reconsideration is *pro forma* for it does not specify the findings or conclusions in the judgment which are not supported by the evidence or which are contrary to law but merely makes reference to the contents of a memorandum that had already been considered by the respondent court before rendering its judgment. We believe and so hold that the judgment thus rendered has become final, and that it may be executed were it not for the moratorium law. Republic Act No. 342, section 2 reads as follows:

"Sec. 2. All debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight years from and after settlement of the war damage claim of the debtor by the United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter into after the approval of this Act for the settlement of said obligations."

The monetary obligation which is the subject of the judgment rendered had been incurred or contracted before December 8, 1941. And the judgment debtor, Julita T. Sarayba, is a war sufferer and co-owner of the damages claimed by her husband, Crispulo F. Arnaldo, with the Philippine War Damage Commission. Exhibit 1, admitted without objection, is a certification of the Secretary of the Philippine War Damage Commission to the effect that private property claim No. 1072272 had been filed with said Commission under the name of Crispulo F. Arnaldo and that private property claim No. 1071519 had been filed with the same Commission under the name of Abucay Plantation of Delgado, Arnaldo, Tañada and Dizon. Crispulo F. Arnaldo testified that the private property claims above mentioned are covered by Exhibits 2–A and 3–A.

To establish that these claims had been filed with the Philippine War Damage Commission, certified copies thereof are not necessary, there being the certification, Exhibit 1, issued by the Secretary of said Commission which is in accord with the testimony of Crispulo F. Arnaldo. The latter testified also that the damages he had claimed were damages caused to property belonging to him and his wife. And damages that may thus be recovered "belong to the husband and wife share and share alike" according to law (art. 1392 Civ. Code).

It may, therefore, be rightly stated that the wife, being a co-owner of the damages claimed by her husband, may be regarded as a co-claimant irrespective of whether her claim may or may not answer legally for the liabilities burdening her paraphernal property. What is important, for the purposes of the moratorium law, is that she be a debtor having a war damage claim, regardless of whether or not there is any relation between her debt and her claim, the source or nature of the claim being immaterial. The purpose of the law is to give the debtor a chance for rehabilitation, and there is no doubt that the rehabilitation of the conjugal partnership may, directly or indirectly, help the spouses ease their individual burdens.

From all the foregoing, the petition is granted and the writ of execution issued by the respondent court is hereby set aside with costs against the respondents. So ordered.

Ozaeta, Parás, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.*, concur.

Petition granted.

[No. L-2516. September 25, 1950]

ANG TEK LIAN, petitioner, *vs.* THE COURT OF APPEALS, respondent

1. CRIMINAL LAW; "ESTAFA"; ISSUING CHECK WITH INSUFFICIENT BANK DEPOSIT TO COVER THE SAME.—One who issues a check payable to cash to accomplish deceit and knows that at the time had no sufficient deposit with the bank to cover the amount of the check and without informing the payee of such circumstances, is guilty of *estafa* as provided by article 315, paragraph (*d*), subsection 2 of the Revised Penal Code.
2. NEGOTIABLE INSTRUMENTS; CHECK DRAWN PAYABLE TO THE ORDER OF "CASH"; INDORSEMENT.—A check payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's indorsement.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Laurel, Sabido, Almario & Laurel for petitioner.

Solicitor General Felix Bautista Angelo and *Solicitor Manuel Tomacruz* for respondent.

BENGZON, *J.:*

For having issued a rubber check, Ang Tek Lian was convicted of *estafa* in the Court of First Instance of Manila. The Court of Appeals affirmed the verdict.

It appears that, knowing he had no funds therefor, Ang Tek Lian drew on Saturday, November 16, 1946, the check Exhibit A upon the China Banking Corporation for the sum of ₱4,000, payable to the order of "cash". He delivered it to Lee Hua Hong in exchange for money which the latter handed in the act. On November 18, 1946, the next business day, the check was presented by Lee Hua Hong to the drawee bank for payment, but it was dishonored for insufficiency of funds, the balance of the deposit of Ang Tek Lian on both dates being ₱335 only.

The Court of Appeals believed the version of Lee Huan Hong who testified that "on November 16, 1946, appellant went to his (complainant's) office, at 1217 Herran, Paco, Manila, and asked him to exchange Exhibit A—which he (appellant) then brought with him—with cash alleging that he needed badly the sum of ₱4,000 represented by the check, but could not withdraw it from the bank, it being then already closed; that in view of this request and relying upon appellant's assurance that he had sufficient funds in the bank to meet Exhibit A, and because they used to borrow money from each other, even before the war, and appellant owns a hotel and restaurant known as the North Bay Hotel, said complainant delivered to him, on the same date, the sum of ₱4,000 in cash; that despite repeated efforts to notify him that the check had been dishonored by the bank, appellant could not be located any-where, until he was summoned in the City Fiscal's Office in view of the complaint for *estafa* filed in connection therewith; and that appellant has not paid as yet the amount of the check, or any part thereof."

Inasmuch as the findings of fact of the Court of Appeals are final, the only question of law for decision is whether under the facts found, *estafa* had been accomplished.

Article 315, paragraph (*d*), subsection 2 of the Revised Penal Code, punishes swindling committed "By post-dating a check, or issuing such check in payment of an obligation the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances".

We believe that under this provision of law Ang Tek Lian was properly held liable. In this connection, it must be stated that, as explained in People *vs.* Fernandez (59 Phil., 615), *estafa* is committed by issuing either a post-dated check or an ordinary check to accomplish the deceit.

It is argued, however, that as the check had been made payable to "cash" and had not been endorsed by Ang Tek

Lian, the defendant is not guilty of the offense charged. Based on the proposition that "by uniform practice of all banks in the Philippines a check so drawn is invariably dishonored," the following line of reasoning is advanced in support of the argument:

"* * * When, therefore, he (the offended party) accepted the check (Exhibit A) from the appellant, he did so with full knowledge that it would be dishonored upon presentment. In that sense, the appellant could not be said to have acted fraudulently because the complainant, in so accepting the check as it was drawn, must be considered, by every rational consideration, to have done so fully aware of the risk he was running thereby." (Brief for the appellant, p. 11.)

We are not aware of the uniformity of such practice. Instances have undoubtedly occurred wherein the Bank required the indorsement of the drawer before honoring a check payable to "cash." But cases there are too, where no such requirement had been made. It depends upon the circumstances of each transaction.

Under the Negotiable Instruments Law (sec. 9 [*d*], a check drawn payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's indorsement.

"A check payable to the order of cash is a bearer instrument. Bacal *vs.* National City Bank of New York (1933), 146 Mise., 732; 262 N. Y. S., 839; Cleary *vs.* De Beek Plate Glass Co. (1907), 54 Mise., 537; 104 N. Y. S., 831; Massachusetts Bonding & Insurance Co. *vs.* Pittsburgh Pipe & Supply Co. (Tex. Civ. App., 1939), 135 S. W. (2d), 818. *See also* H. Cook & Son *vs.* Moody (1916), 17 Ga. App., 465; 87 S. E., 713."

"Where a check is made payable to the order of 'cash', the word cash 'does not purport to be the name of any person', and hence the instrument is payable to bearer. The drawee bank need not obtain any indorsement of the check, but may pay it to the person presenting it without any indorsement. * * *" (Zollmann, Banks and Banking, Permanent Edition, Vol. 6, p. 494.)

Of course, if the bank is not sure of the bearer's identity or financial solvency, it has the right to demand identification and/or assurance against possible complications,—for instance, (*a*) forgery of drawer's signature, (*b*) loss of the check by the rightful owner, (*c*) raising of the amount payable, etc. The bank may therefore require, for its protection, that the indorsement of the drawer—or of some other person known to it—be obtained. But where the Bank is satisfied of the identity and/or the economic standing of the bearer who tenders the check for collection, it will pay the instrument without further question; and it would incur no liability to the drawer in thus acting.

"A check payable to bearer is authority for payment to the holder. Where a check is in the ordinary form, and is payable to bearer, so that no indorsement is required, a bank, to which it is presented for payment, need not have the holder identified, and is not negligent in failing to do so. * * *" (Miehie on Banks and Banking, Permanent Edition, Vol. 5, p. 343.)

"* * * Consequently, a drawee bank to which a bearer check is presented for payment need not necessarily have the holder identified and ordinarily may not be charged with negligence in failing to do so. See Opinions 6C:2 and 6C:3. If the bank has no reasonable cause for suspecting any irregularity, it will be protected in paying a bearer check, 'no matter what facts unknown to it may have occurred prior to the presentment.' 1 Morse, Banks and Banking, sec. 393.

"Although a bank is entitled to pay the amount of a bearer check without further inquiry, it is entirely reasonable for the bank to insist that the holder give satisfactory proof of his identity. * * *." (Paton's Digest, Vol. I, p. 1089.)

Anyway, it is significant, and conclusive, that the form of the check Exhibit A was totally unconnected with its dishonor. The Court of Appeals declared that it was returned unsatisfied *because the drawer had insufficient funds*—not because the drawer's indorsement was lacking.

Wherefore, there being no question as to the correctness of the penalty imposed on the appellant, the writ of certiorari is denied and the decision of the Court of Appeals is hereby affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Tuason, and *Reyes, JJ.,* concur.

Petition denied.

[No. L-3743. September 25, 1950]

PHILIPPINE ASSOCIATION OF MECHANICAL AND ELECTRICAL ENGINEERS, petitioner, *vs.* PROSPERO SANIDAD, in his capacity as Secretary of Public Works and Communications, MARCIANO S. ANGELES, CLODOVEO SORIANO, and CELSO PRECLARO, in their capacity as members of the Board of Mechanical Engineering Examiners, respondents.

1. ENGINEERS; COMMONWEALTH ACT NO. 294 AS AMENDED BY COMMONWEALTH ACT NO. 481 APPLIED; MARINE ENGINEER, WITH REQUIRED EXPERIENCE; REGISTRATION FOR PROFESSIONAL MECHANICAL ENGINEER WITHOUT PREVIOUS EXAMINATION.—The law is clear and explicit. All that it requires, in the case of a marine engineer applying for a certificate of registration as a "professional mechanical engineer" is, in addition to the title of chief marine engineer of the merchant marine, possession of "fifteen years experience in marine and/or mechanical plant engineering." It does not say that that experience should include the preparation of plans, designs, investigations, technical reports, specifications or estimates. Experience in those matters might conceivably be desirable. But the law has not gone to the extent of requiring it, and the board can go no further than the law. The board can only administer the statute as it is and not as it thinks it should be.

2. ID.; DUTY OF BOARD OF MECHANICAL ENGINEERS; WHEN COURTS MAY NOT INTERFERE.—If the applicants for a certificate of registration for professional mechanical engineers are by law entitled to what they are asking for, it is the board's plain duty to grant it, and the courts will not interfere with an

official act directing compliance with that duty when the directive comes from the department of the government having supervisory authority over the board.

ORIGINAL ACTION in the Supreme Court. Prohibition and/or certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

Tañada, Pelaez & Teehankee for petitioner.

Assistant Solicitor General Francisco Carreon and *Solicitor Pacifico P. de Castro* for respondent Secretary of Public Works and Communications.

Marciano S. Angeles, Clodoveo Soriano and *Celso Preclaro* in their own behalf.

Buenaventura Evangelista for respondent Barretto.

Ramon Diokno and *Jose W. Diokno* for intervenor Fortun.

REYES, *J.:*

Commonwealth Act No. 294, approved on June 9, 1938, regulates the practice of mechanical engineering in the Philippnies and creates a Board of Mechanical Engineering Examiners to administer its provisions. The board is composed of three members appointed by the Secretary of Public Works and Communications and for administrative purposes comes under the supervisory authority of that officer by virtue of section 79 (*c*) of the Revised Administrative Code.

The Act provides that "no person shall practice or attempt to practice mechanical engineering in the Philippines, without having previously obtained a certificate of registration" (sec. 12), and that this certificate is to be issued by the Secretary of Public Works and Communications upon the recommendation of the Board (sec. 28). The Act establishes hierarchy or grades in the profession and to that end provides that the "Certificates of registration for the practice of mechanical engineering shall be of four grades and in the order of rank as follows: (1) professional mechanical engineer, (2) mechanical plant engineer, (3) junior mechanical engineer, and (4) certified plant mechanic."

To obtain a certificate of registration the applicant must possess the qualifications prescribed for the grade applied for and is furthermore required to pass a technological examination. But by sections 24 to 27 of the Act this examination is dispensed with in the case of applicants with certain qualifications submitting proof of practical experience of a character satisfactory to the Board. Those sections read:

"SEC. 24. *Registration as professional mechanical engineer without examination.*—No examination shall be required of any person who shall, with his application for registration as professional mechanical

engineer, submitted to the Board within one year from the date this Act becomes effective, present evidence or other proof satisfactory to the Board, showing that, on the date of the approval of this Act, he had a specified record of four years or more of active practice in mechanical engineering work of a character satisfactory to the Board and indicating that the applicant is competent to render professional mechanical engineering service and to be placed in responsible charge of such work; and, any of the following qualifications:

"(*a*) Had passed a civil service examination for senior mechanical engineer; or

"(*b*) Was a mechanical engineer duly licensed by the Board of Examiners for Mechanical Engineers under Act Numbered Two thousand nine hundred eighty-five of the Philippine Legislature of nineteen hundred twenty-one, as amended.

"SEC. 25. *Registration as mechanical plant engineer without examination.*—No examination shall be required of any person who shall, with his application for registration as mechanical plant engineer, submitted to the Board within one year from the date this Act becomes effective, present evidence or sufficient proof satisfactory to the Board, showing that, on the date of the approval of this Act, he had any of the following qualifications:

"(*a*) Ten years or more of active practice in mechanical engineering work of a character showing that the applicant is competent to take charge of the construction, erection, installation, alteration, operation, and management of mechanical works, projects, or plants, and has the first three qualifications specified under section seventeen of this Act; or

"(*b*) Actual employment on the approval of this Act in a regularly organized mechanical works, project, or plant of more than two hundred horse-power capacity and has rendered satisfactory supervisory services without any serious accident as certified by his employer: *Provided, however*, That his registration will be valid only for the works, plant, or project where he is actually employed or similar works, plant, or project; or

"(*c*) A civil service examination for senior mechanical engineer or a mechanical engineer license issued by the Board of Examiners for Mechanical Engineers under Act Numbered Two thousand nine hundred and eighty-five of the Philippine Legislature of the year nineteen hundred and twenty-one, as amended, with four years or more of active practice in mechanical engineering work of such character showing to the satisfaction of the Board, that the applicant is competent to take charge of the construction, erection, installation. alteration, operation, and management of mechanical works, projects, or plants, and to render engineering service in connection with the manufacture, sale, supply or distribution of mechanical equipment, machinery, or processes. (As amended by Com. Act No. 481.)

"SEC. 26. *Registration as junior mechanical engineer without examination.*—No examination shall be required of any person who shall, with his application for registration as junior mechanical engineer, submitted to the Board within one year after this Act becomes effective, present evidence or other sufficient proof satisfactory to the Board, showing that, on the date of the approval of this Act, he had any of the following qualifications:

"(*a*) Had passed a civil service examination for senior or assistant mechanical engineer; or

"(*b*) Was a mechanical engineer duly licensed by the Board of Examiners for Mechanical Engineers under Act Numbered Twenty-nine hundred and eighty-five of the Philippine Legislature of the year ninteen hundred and twenty-one, as amended.

"SEC. 27. *Registration as certified plant mechanic without examination.*—No examination shall be required of any person who shall, with his application for registration as certified plant mechanic, submitted to the Board within one year after this Act becomes effective, present evidence satisfactory to the Board, showing that, on the date of approval of this Act:

"(*a*) He had ten years or more of active practice in mechanical plant operation of a character showing that the applicant is competent to undertake the operation and maintenance of mechanical works, projects, or plants of less than two hundred horse-power, has working knowledge of and can read, write, and speak English, Spanish, or any of the Filipino languages, and has the first two qualifications specified under section nineteen of this Act; or

"(*b*) He is actually employed on the approval of this Act in the operation of a regularly organized mechanical works, project, or plant of less than two hundred horse-power capacity without serious accident as certified by his employer: *Provided, however,* That his registration will be valid only for the works, project or plant where he is actually employed or for similar works, project, or plant." (As amended by Com. Act No. 481.)

Also entitled to the benefit of exemption from examination are marine engineers with experience in marine or mechanical plant engineering. Their case has been specifically provided for by Commonwealth Act No. 481, approved in June, 1939, amending section 44 of the original Act. As amended, that section reads:

"SEC. 44. *Act not affecting other professions.*—This Act shall not be construed to affect or prevent the practice of any legally recognized professions: Provided, however, That until December thirty-first, nineteen hundred and forty-five, any holder of the title of marine engineer of the merchant marine duly issued by competent authority of the Commonwealth of the Philippines in pursuance with the requisites and qualifications provided by the laws for marine engineers of the merchant marine, shall be permitted to secure a registration certificate in mechanical engineering as defined by this Act with all the rights, privileges, and obligations incumbent in the practice of the same as provided by this Act, under the following limitations:

"(*a*) That any holder of the title of chief marine engineer of the merchant marine may, at any time, upon payment of thirty pesos registration fees to the Board of Mechanical Engineering Examiners, practice as professional mechanical engineer under this Act, without examination, provided he has in his favor fifteen years experience in marine and/or mechanical plant engineering;

"(*b*) That any holder of the title of chief marine engineer of the merchant marine may, at any time, upon payment of thirty pesos registration fees to the Board of Mechanical Engineering Examiners, practice as mechanical plant engineer under this Act, without examination, provided he has in his favor ten years experience in marine and/or mechanical plant engineering;

"(*c*) That any holder of the title of second marine engineer of the merchant marine may, at any time, upon payment of twenty pesos registration fees to the Board of Mechanical Engineering Examiners, practice as junior mechanical engineer under this Act, without examination, provided he has in his favor eight years experience in marine and/or mechanical plant engineering;

"(*d*) That any holder of the title of third and fourth marine engineer of the merchant marine may, at any time, upon payment

of ten pesos registration fees to the Board of Mechanical Engineering Examiners, practice as certified plant mechanic under this Act, without examination, provided he has in his favor six years experience in marine and/or mechanical plant engineering." (As amended by Comm. Act No. 481.)

Taking advantage of the above amendment, Tomas F. Barretto and Pedro Fortun applied in 1941 for a certificate of registration for "professional mechanical engineer," without previous examination, on the strength of their status as holders of the title of chief marine engineer of the merchant marine with "fifteen years experience in marine and/or mechanical plant engineering" as specified in paragraph (*a*) of the amendment. But the board considered their experience inadequate for the class of certificate applied for and turned down their application. On appeal to the Secretary of Public Works and Communications, this office ruled (and the ruling is supported by the opinion of the Department of Justice) that the applicants were entitled to what they were applying for and instructed the board to submit to his Department for approval registration certificates for professional mechanical engineer duly accomplished for issuance to the applicants. With the board showing reluctance to act as directed, the Philippine Association of Mechanical and Electrical Engineers, a private entity claiming to have interest in the maintenance of high standards in the mechanical engineering profession, decided to intervene, and upon the ground that the Secretary's directive to the board was without the authority of law and constituted a grave abuse of official discretion, brought the present special civil action for a writ of prohibition and certiorari to have the directive declared void and the Secretary and the board enjoined from proceeding further in the premises and from issuing to the applicants, without previous examination, certificates of registration for professional mechanical engineer. The petition is conformed to by the board but opposed by the Secretary as well as by the applicants themselves, who, because of their interest in the subject matter of the action, have been allowed to intervene.

Brushing aside objection to the petitioner's legal capacity to institute this action, a technicality which may well be overlooked after the board has, by its answer, made common cause with the petitioner, the case presents a simple matter of statutory application. The specific legal provision to be applied is section 44 (*a*) of Commonwealth Act No. 294, as amended, which, until December 31, 1945, accords to any holder of the title of marine engineer of the merchant marine who has had "fifteen years experience in marine and/or mechanical engineering" the privilege to practice as professional mechanical engineer, without previous examination.

The record shows and it is not disputed that both applicants are holders of the title of chief marine engineer of the merchant marine. Neither is there any question that they both have fifteen years experience in marine and/or mechanical plant engineering, this experience being summarized in the opinion rendered by the Secretary of Justice on February 20, 1950, as follows:

> "The record of Mr. Tomas F. Barretto shows that, from 1924 to 1935 (a period of 12 years), he served as engineer in various steamships in ranks ranging from 4th to 1st and as assistant chief engineer and chief engineer of the San Miguel Brewery, from 1936 to 1945 (a period of 9 years). Mr. Fortun's record shows that he was 3rd and 4th marine engineer from 1914 to 1921 (7 years) and a train engineer and a mill engineer from 1921 to 1939 (18 years)."

And it furthermore appears that both applicants, solely on the strength of their said title and experience, have already been issued by the board a certificate of registration for mechanical plant engineer" under another paragraph of the section now under consideration (section 44 [*b*], as amended). It is, however, claimed that applicants' experience, as above set forth, though sufficient for the profession of "mechanical plant engineer," is inadequate for that of "professional mechanical engineer," the board being of the opinion that the exercise of the latter profession requires experience in the "preparation of plans, designs, investigations, technical reports, specifications or estimates." We find no legal basis for this claim. The law is clear and explicit. All that it requires, in the case of a *marine* engineer applying for a certificate of registration as a "professional mechanical engineer" is, in addition to the title of chief marine engineer of the merchant marine, possession of "fifteen years experience in marine and/or mechanical plant engineering." It does not say that that experience should include the preparation of plans, designs, investigations, technical reports, specifications or estimates. Experience in those matters might conceivably be desirable. But the law has not gone to the extent of requiring it, and the board can go no further than the law. The board can only administer the statute as it is and not as it thinks it should be.

That the board wants to read into the law something that is not there, is obvious from a perusal of all the paragraphs of section 44 of the Act as amended. For it is there to be noted that the same kind of experience is required of all the four grades of mechanical engineers entitled to a certificate of registration without previous examination. Be it for the grade of professional mechanical engineer (par. [*a*]), which occupies top rank, or for that of mere certified plant mechanic (par. [*d*]), which occupies the lowest, the only experience required is "*experience in marine and/or mechanical plant engineering.*" The length of experience

required varies according to grade: 15 years for professional mechanical engineer (par. [*a*]), 10 years for mechanical plant engineer (par. [*b*]), 8 years for junior mechanical engineer (par. [*c*]), and 6 years for certified plant mechanic (par. [*d*]). But the subject of experience remains the same and there is not the faintest suggestion that it should include more in one grade than in any of the others.

It should be noted in this connection that, in the matter of exemption from examination, the law has not placed marine engineers on the same footing as mechanical engineers on land. This is evident from the fact that their case has been provided for specifically and separately in an amendment to section 44 of the Act and not by an amendment to those sections (24 to 27) which specify the conditions under which mechanical engineers on land may register without previous examination. Obviously, the purpose of the law is to enable marine engineers with the requisite title and experience as such to practice mechanical engineering on land without subjecting them to the conditions specified in sections 24 to 27. To apply to them any of those conditions is to go against the clear intent of the lawmaker.

It follows from the foregoing that the Secretary of Public Works and Communications has correctly ruled that the applicants, Tomas F. Barreto and Pedro Fortun, are each entitled to a certificate of registration as professional mechanical engineer. And in directing that the proper certificates be prepared for issuance, the Secretary cannot, contrary to petitioner's claim, be said to have encroached upon or interfered with the technical functions of the board, for this entity has no technical functions to perform in connection with the preparation and issuance of said certificates. As already noted, this is not a case falling under sections 24 to 27 of the Act, which empowers the board to examine the nature and extent of the applicant's experience and determine from the standpoint of its technical knowledge whether that experience is sufficient for the practice of mechanical engineering. The case comes squarely and specifically under section 44, as amended, where all that is required, in addition to title, is experience in marine and/or mechanical plant engineering. It being undisputed that applicants have that experience to their credit, the board may not require more.

The board has by its answer made it plain that it is opposed to the aforementioned directive of the Secretary of Public Works and Communications, and the question may be asked whether the Secretary could legally compel it to do an act which in its opinion should not be done. But the question is of no importance and need not be decided here. It having been determined that the applicants are

by law entitled to what they are asking for, it becomes the board's plain duty to grant it, and this court will not interfere with an official act directing compliance with that duty when the directive comes from the Department of the Government having supervisory authority over the board.

For the foregoing considerations, the petition is denied, with costs against the petitioner.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Tuason, and *Montemayor, JJ.,* concur.

Petition denied.

[No. L-2362. September 29, 1950]

ANISIA AQUINO and AMBROSIO AQUINO, in his own behalf and as guardian *ad-litem* of his minor grandchildren MARIA CORONA AQUINO and ISABEL AQUINO, petitioners, *vs.* SOTERO ESGUERRA and RUFINA TANDOC, respondents.

1. OBLIGATIONS AND CONTRACTS; CONSIDERATION; AVOIDANCE OF POSSIBLE LITIGATION AS VALID AND VALUABLE CONSIDERATION.—Where a conveyance of part of an estate was made by the heirs to save the estate from a possible litigation, said conveyance was for a valid and valuable consideration.
2. ID.; COMPROMISE; WAIVER OF CLAIM AS CONSIDERATION.—Where a conveyance by the heirs is made in exchange for the settlement of any claim which the grantee may have against said heirs, the agreement may be considered as a contract of compromise.

PETITION for review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Teofilo P. Guadiz for petitioners.
Vicente Bengzon for respondents.

PARÁS, *J.:*

On November 19, 1928, Filomena Manaois sold a parcel of land to Sotero Esguerra, with right of repurchase within five years. Filomena Manaois died in 1929. The land, which was never repurchased, subsequently became the subject of a cadastral proceeding as lot 2758; and by decision of the Court of Appeals promulgated on August 5, 1938, only a three-fifth portion thereof was adjudicated to the heirs of Filomena Manaois subject to the sale in favor of Sotero Esguerra, the remaining two-fifths portion being awarded to Teodora Manaois. In view of this loss to Sotero Esguerra of a portion of lot 2758, Anisia Aquino, Arnulfo Aquino, Romulo Aquino and Benigno Aquino, children of Filomena Manaois, the latter two (then minors) being represented by Ambrosio Aquino, husband of Filomena Manaois, executed on November 12, 1940, an agree-

ment whereby they conveyed to Sotero Esguerra a portion of three-fifths of lot 2761 also adjudicated in the cadastral proceeding to Filomena Manaois. The agreement provided that the heirs of Filomena Manaois "ceden y traspasan a favor de Sotero Esguerra, sus herederos y causahabientes, una porción del lote 2761 de las 3/5 partes que se les había adjudicado, equivalente a la extensión superficial de los 2/5 partes que se adjudicó a favor de Teodora Manaois del lote 2758, para recompensar la porción que se había perdido Sotero Esguerra del lote 2758."

Failing to get possession of the portion conveyed by the heirs of Filomena Manaois under this agreement, Sotero Esguerra and his wife, Rufina Tandoc, instituted in the Court of First Instance of Pangasinan a complaint against Anisia Aquino, Romulo Aquino, Benigno Aquino, Maria Corona Aquino and Isabel Aquino, the latter two being the children of Arnulfo Aquino, deceased, to recover said portion and lost rentals. After trial, the Court of First Instance of Pangasinan rendered a decision dismissing the complaint. Upon appeal, the Court of Appeals promulgated a decision the dispositive part of which reads as follows:

"For the foregoing considerations, the judgment appealed from is hereby affirmed in so far as it dismisses the action against the defendants Romulo Aquino and Benigno Aquino, and is reversed as to defendants Anisia Aquino and Maria Corona Aquino and Isabel Aquino, and it is hereby declared that the plaintiffs are the owners and are entitled to the possessoin of an undivided 3/10 portion of lot No. 2761, which portion is the share of the latter in the said parcel of land, and said defendants Anisia Aquino and Maria Corona Aquino and Isabel Aquino are hereby sentenced to indemnify the plaintiffs for damages for the possession of the said portion at the rate of ₱103 a year (₱51.50 for Anisia and ₱51.50 jointly for Maria Corona and Isabel), beginning the year 1942 until the said portion is delivered to the plaintiffs. Without pronouncement as to costs in both instances."

The case is now before us on appeal by certiorari by Anisia Aquino and Ambrosio Aquino, the latter in his own behalf and as guardian *ad litem* of the minors Maria Corona Aquino and Isabel Aquino. It is argued by petitioners that the agreement of November 12, 1940, Exhibit C, is not valid, being prompted by the wrong belief of the petitioners that they were bound to compensate Sotero Esguerra for the portion of lot 2758 lost by him as a result of the adjudication in favor of Teodora Manaois of a two-fifth portion thereof in the cadastral proceeding, and that while Filomena Manaois was legally obligated to warrant her title to the land sold to Sotero Esguerra, the latter's remedy is against her estate, not against her heirs who are not answerable for her debts and obligations.

The Court of Appeals correctly upheld the validity of Exhibit C in so far as it concerns Anisia Aquino and Arnulfo Aquino (the latter being substituted by his children

Maria Corona Aquino and Isabel Aquino), because the said Anisia and Arnulfo Aquino were of age when they executed the agreement. As properly ruled by the Court of Appeals, "the agreement was convenient and wise for them, not only because it would relieve the other properties from the charge or lien with which they inherited them from the deceased, but also because it would prevent a circuitous and expensive litigation in court (such as that suggested by the trial court), into which they would have been dragged if the vendee would enforce the deceased's obligation of warranty for his eviction in part of the property sold to him by the deceased. The conveyance saved the estate from a possible litigation and its execution was for a valid and valuable consideration (Ibañez de Aldecoa *vs.* Hongkong & Shanghai Bank, 30 Phil., 228, 255). It is apparent that it is neither contrary to law, nor public policy, nor public morals, and perfectly valid as against those who were competent to execute it."

Under Exhibit C, in exchange for the conveyance by the heirs of Filomena Manaois of a portion of lot 2761, Sotero Esguerra covenanted that, "cualquier derecho o reclamación que tuviere Sotero Esguerra contra los herederos de la finada Filomena Manaois e Isabel Daroy, queda por la presente, zanjada y arreglada definitivamente, en virtud de la presente transaccion." Accordingly, the agreement may well be considered as a contract of compromise.

The Court of Appeals has premised the liability of the petitioners upon Exhibit C. Lot No. 2761 is alleged in the very complaint filed by the respondents (plaintiffs below) as having an area of 72,656 square meters. Said complaint specifically prayed that the respondents be declared the owners of 10,317.6 square meters of lot 2761, which "is equivalent to the 2/5 of lot No. 2758." This relief is clearly in conformity with Exhibit C conveying "una porción del lote 2761 de las 3/5 partes que se les había adjudicado, equivalente a la extensión superficial de los 2/5 partes que se adjudicó a favor de Teodora Manaóis del lote 2758, para recompensar la porción que se había perdido Sotero Esguerra del lote 2758."

In the dispositive part of the decision of the Court of Appeals, the respondents are declared the owners and entitled to the possession of "an undivided 3/10 portion of lot 2761," which literally means that said respondents are being awarded 21,796.8 square meters. This is clearly inconsistent with the ruling of the Court of Appeals giving effect to the agreement of November 12, 1940, Exhibit C, under which, as already noted, the portion conveyed to the respondents was only a part of lot 2761 equivalent to the two-fifths of lot 2758 lost by the respondents, said lost portion having an area, according to the very complaint of respondents, of 10,317.6 square meters.

The complaint having been dismissed by the Court of Appeals as to the two minor heirs of Filomena Manaois, and sustained as to the shares of her two other children, the respondents should be entitled only to one-half of 10,317.6 square meters, or 5,158.8 square meters, of lot 2761.

With respect to the contention of the petitioners that the damages to which the respondents are entitled should only be one-half of ₱113.60, or ₱56.80, payable beginning 1943, the decision of the Court of Appeals does not contain any finding which would warrant petitioners' claim. As the amount awarded by the Court of Appeals and the year from which payment should start, refer to factual matters, as to which said court has made definite findings in its decision, the same cannot be the subject of review in this appeal by certiorari.

It being understood that the respondents are declared to be the owners and entitled to the possession of an area of only 5,158.8, square meters of lot 2761, the appealed decision of the Court of Appeals is, in all other respects, hereby affirmed without costs. So ordered.

Moran, C. J., Ozaeta, Feria, Pablo, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L-2467. September 29, 1950]

C. N. HODGES, plaintiff and appellee, *vs.* MARIA GAY, SOUTHERN INVESTMENT CO., INC., ROBERTO LAPERAL, VICTORINA G. DE LAPERAL, and SOFRONIO FLORES, defendants. ROBERTO LAPERAL and VICTORINA G. DE LAPERAL, appellants.

OBLIGATIONS AND CONTRACTS; VALIDITY OF PAYMENT OF PRE-WAR DEBT VOLUNTARILY MADE TO ENEMY PROPERTY CUSTODIAN.—The payment of a pre-war debt voluntarily made by the debtor to the Enemy Property Custodian of the Japanese Army is valid, because the latter was authorized to receive said payment in the name of the enemy creditor under article 1162 of the Civil Code.

APPEAL from a judgment of the Court of First Instance of Iloilo. Makalintal, J.

The facts are stated in the opinion of the court.

Remigio & Lopez Vito, Jr. for appellants.
Leon P. Gellada for appellee.

PARÁS, *J.:*

The defendant Maria Gay had an indebtedness, secured by mortgage, to the plaintiff C. N. Hodges in the total sum of ₱41,663.50, payable on or before June 3, 1942. When the war broke out in December, 1941, the plaintiff, an Amer-

ican citizen, left his residence in the City of Iloilo and evacuated to the mountains of Panay where he remained in hiding until March 20, 1944, when he escaped for the United States, coming back to the Philippines only after liberation. On March 15, 1944, Maria Gay, without the knowledge or consent of the plaintiff, paid the mortgage indebtedness to the office of the Enemy Property Custodian of the Japanese Army which thereupon issued a certificate of cancellation of the mortgage deed in favor of the plaintiff. On April 4, 1944, Maria Gay sold the properties covered by the mortgage to the defendant Southern Investment Co., Inc. for ₱100,000. The latter, on April 28, 1944, in turn sold said properties to the defendant spouses Roberto Laperal and Victorina G. de Laperal for ₱250,000. With previous cancellation of the mortgage in favor of the plaintiff and of the corresponding certificates of title the Register of Deeds of Iloilo issued transfer certificates of title Nos. 82 and 83 in the names of the spouses Roberto Laperal and Victorina G. de Laperal, free from any lien or incumbrance.

On October 19, 1945, the plaintiff instituted the present action in the Court of First Instance of Iloilo, to annul the deeds of sale successively executed by Maria Gay and the Southern Investment Co., Inc., and the transfer certificates of title issued thereunder in the names of Roberto Laperal and Victorina G. de Laperal, and to recover from the defendant Maria Gay her mortgage indebtedness, with interest at one per cent per month, plus attorney's fees in the sum of ₱7,160, in default of which it is prayed that the mortgage be foreclosed in accordance with law.

The defendants Southern Investment Co., Inc., and the Register of Deeds of Iloilo were declared in default for failure to file an answer to the complaint. After trial, the Court of First Instance of Iloilo rendered on December 23, 1946, a decision the dispositive part of which reads as follows:

"In view of the foregoing considerations, judgment is hereby rendered:

"(1) Declaring null and void the act of the defendant register of deeds for the Province of Iloilo in cancelling the annotation of the mortgage executed by the defendant Maria Gay in favor of the plaintiff C. N. Hodges on transfer certificates of title Nos. 16561 and 16562, covering lots Nos. 690 and 192 respectively, of the cadastral survey of Iloilo;

"(2) Declaring that the sale of the aforesaid properties by the defendant Maria Gay to the defendant Southern Investment Co., Inc., by virtue of the document Exhibit '2-Laperal' dated April 4, 1944, and the sale by the latter to the defendant spouses Roberto Laperal and Victorina G. de Laperal, by virtue of the document Exhibit '3-Laperal,' dated April 28, 1944, are both subject to the mortgage Exhibit B in favor of the plaintiff C. N. Hodges;

"(3) Ordering the defendant Maria Gay to pay to the plaintiff C. N. Hodges or to this court within 90 days from the date the debt moratorium is lifted (Executive Order No. 32), the sum of

₱55,974.35, with interest thereon at the rate of 1 per cent per month from December 17, 1946, plus 10 per cent of the entire amount due by way of attorney's fees, and the costs of this suit;

"(4) In default of such payment, ordering that the properties mortgaged be sold to realize the mortgage debt, the attorney's fees, and costs, in accordance with the rules therefore provided."

Upon motion for reconsideration filed by the plaintiff, the trial court issued an order dated February 5, 1947, amending the judgment of December 23, 1946, "so that the amount of ₱55,974.35 appearing therein as the indebtedness of the defendant Maria Gay to the plaintiff C. N. Hodges as of December 17, 1946, should read ₱64,493.90."

The case is now before us upon appeal by the defendant spouses Roberto Laperal and Victorina G. de Laperal.

The trial court held that, although the evidence tends to show that the payment made by the defendant Maria Gay to the Enemy Property Custodian of the Japanese Army on March 15, 1944, was voluntary, said fact is not decisive because duress cannot be a defense "'if the person or entity by whom it was employed did not have the right or authority to represent the mortgage creditor C. N. Hodges to the extent of confiscating and liquidating his credit, or accepting payment and cancelling the mortgage without his consent."

In the case of Haw Pia *vs.* China Banking Corporation, decided on April 9, 1948 (Supplement to the Official Gazette, Vol. 45, No. 9, 229, 255) we made the following pronouncement:

"The second question is, we may say, corollary of the first. It having been shown above that the Japanese Military Forces had power to sequestrate and impound the assets or funds of the China Banking Corporation, and for that purpose to liquidate it by collecting the debts due to said bank from its debtors, and paying its creditors, and therefore to appoint the Bank of Taiwan as liquidator with the consequent authority to make the collection, it follows evidently that the payments by the debtors to the Bank of Taiwan of their debts to the China Banking Corporation have extinguished their obligation to the latter. Said payments were made to a person, the Bank of Taiwan, authorized to receive them in the name of the bank creditor under article 1162, of the Civil Code. Because it is evident the words 'a person authorized to receive it,' as used therein, means not only a person authorized by the same creditor, but also a person authorized by law to do so, such as guardian, executor or administrator of estate of a deceased, and assignee or liquidator of a partnership or corporation, as well as any other who may be authorized to do so by law. (Manresa, Civil Code, 4th ed., p. 254.)"

This pronouncement is applicable to the case at bar. It is true that in the case of Haw Pia *vs.* China Banking Corporation, the debtor paid to the Japanese Military Authorities upon demand of the latter, and that in the case at bar, according to the trial court, the defendant Maria Gay paid to the Enemy Property Custodian of the Japanese

Army voluntarily. But this distinction is not important, since the decisive consideration is that the Japanese Military Authorities were authorized to receive payment in the name of the plaintiff under article 1162 of the Civil Code. It is noteworthy that the decision in Haw Pia *vs.* The China Banking Corporation was not predicated on the circumstance that the debtor was compelled by the Bank of Taiwan to pay his indebtedness owing to the China Banking Corporation.

Wherefore, the appealed judgment is reversed and the defendants-appellants absolved from the complaint. So ordered, without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, and *Montemayor, JJ.,* concur.

TUASON, *J.,* dissenting:

I dissent from the majority opinion on the grounds stated in the dissents in Haw Pia *vs.* China Banking Corporation (45 Off. Gaz., Supp. No. 9, p. 229), and in other cases in which this court's decisions were rested on the Haw Pia *vs.* China Banking Corporation principle.

Judgment reversed.

[No. L-2670. Septemebr 29, 1950]

Intestate estate of the late Howard J. Edmands. JANE E. EDMANDS, petitioner and appellee; RODOLFO M. MEDINA, ancillary administrator, *vs.* PHILIPPINE TRUST COMPANY, claimant and appellant.

1. DESCENT AND DISTRIBUTION; COURT'S DISCRETION TO ADMIT CLAIMS AFTER DISTRIBUTION ORDER ENTERED.—In pursuance of section 2 of Rule 87 of the Rules of Court, there is a time limit for the exercise by the court of discretion to allow claims presented beyond the period previously fixed. The time is one month from the expiration of such period but in no case beyond the date of entry of the order, and a claim presented thereafter is considered barred.
2. ID.; DISTRIBUTION MAY BE ALLOWED ALTHOUGH THERE ARE OUTSTANDING OBLIGATIONS.—Distribution is permitted even though there are outstanding obligations if sufficient bond is filed or provision made to meet them pursuant to the last paragraph of section 1 of Rule 91 of the Rules of Court.

APPEAL from an order of the Court of First Instance of Baguio. Concepcion, J.

The facts are stated in the opinion of the court.

La O & Feria for appellant.
Gibbs, Gibbs, Chuidian & Quasha for appellee.

TUASON, *J.:*

The questions for decision on this appeal are, when is an order of distribution in a probate proceeding deemed effective within the meaning of section 2 of Rule 87 of

the Rules of Court? and has the court of first instance discretion to admit claims against a decedent's estate after such order has been entered?

Section 2 of Rule 87 reads:

"SEC. 2. *Time within which claims shall be filed.*—In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve nor less than six months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one month."

It appears that Howard J. Edmands having died in Baguio, testate proceedings were instituted in the Court of First Instance of that City for the administration and settlement of his estate.

On February 12, 1947, a notice to creditors was ordered published, requiring such creditors to file their claims within six months from the date of first publication of the notice. The notice was published once a week for three consecutive weeks, beginning February 12, 1947, in the *Manila Post,* a daily newspaper said to be of general circulation in the Philippines, in Mountain Province and in the City of Baguio. Other legal requirements in connection with the publication of the notice were complied with; at least such compliance is not denied.

The period of six months having expired on August 22, 1947, and no claims having been filed, the ancillary administrator, on September 29, 1947 filed his final inventory and project of partition which gave the sum of ₱17,100 as the value of the estate, and listed the liabilities which consisted of expenses advanced by the petitioner, estate and income taxes, and attorney's fees, totalling ₱4,613.54.

On November 14, 1947, the court made an order authorizing the ancillary administrator to pay the above liabilities and, after such payment, to make and file his final report of accounts and to deliver to Jane E. Edmands, the decedent's widow, the residue of the conjugal estate, which, it turned out, was U. S. $6,428.28.

After these disbursements there remained only new income taxes to be paid, the amount of which was pending determination by the Collector of Internal Revenue. The estimated amount of these taxes was ₱2,052 and this amount in cash was set aside for the above purpose.

On December 22, the ancillary administrator filed a petition to close the estate.

On August 12, 1948, the Philippine Trust Company, through counsel, filed a motion to allow presentation of claim accompanied by a copy of the claim, which was to be for the sum of ₱200. Counsel explained that the Philippine Trust Company had just come to know of Edmands'

death, and said that they had sent on July 21, 1948, to the clerk of court a letter of inquiry regarding the status of the testate proceedings.

It will be seen from section 2 of Rule 87 that there is a time limit for the exercise by the court of discretion to allow claims presented beyond the period previously fixed. The time is one month from the expiration of such period but in no case beyond the date of entry of the order.

It is manifest from the above facts that the court below properly declared the appellant's claim barred. There is no merit to the argument that, since not all the debts had been paid, distribution of the assets was premature. Distribution is permitted even though there are outstanding obligations if sufficient bond is filed or provision made to meet them. Thus the last paragraph of section 1 of Rule 91 provides that "No distribution shall be allowed until the payment of the obligations above-mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs." In this case the distributees had deposited in court ₱2,052 in lawful currency to answer for the still pending liability of the estate to the Government for taxes. This deposit conformed to, or at least was in substantial compliance with, the provision of the Rule just quoted.

The appealed order is affirmed with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, and *Montemayor, Reyes, JJ.,* concur.

Order affirmed.

[No. L-2726. September 29, 1950]

GREGORIO ESTRADA, plaintiff, *vs.* PROCULO NOBLE, defendant

COURTS; SUPREME COURT; JURISDICTION; APPEALS INVOLVING ONLY ERRORS OR QUESTIONS OF LAW.—Among the cases over which the Supreme Court has exclusive appellate jurisdiction, are those in which only errors or questions of law are involved. Where appellant in his notice of appeal states that the issues to be raised in the appeal are mostly questions of law, and in his brief he assigns errors involving questions of fact, the appeal falls within the exclusive appellate jurisdiction of the Court of Appeals.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Palacio, J.

The facts are stated in the opinion of the court.

Jose M. Peñas for appellant.
De Leon & Tiuseco for appellee.

PARÁS, *J.:*

This is an action to redeem a parcel of land worth about ₱3,000. The Court of First Instance of Camarines Sur

rendered judgment in favor of the plaintiff. In the notice of appeal filed on November 22, 1948, the defendant announced his intention to appeal to the Supreme Court "inasmuch as the issues involved therein are mostly questions of law." The record was accordingly elevated to this Court. Several errors assigned in the brief for defendant-appellant unquestionably refer to questions of fact.

Among the cases over which the Supreme Court has exclusive appellate jurisdiction, are those in which only errors or questions of law are involved. (Constitution, Art. VIII, sec. 2, par. 5; sec. 17, Rep. Act No. 296.) Conformably to this constitutional and statutory precept, the Rules of Court (sec. 3, Rule 42) provide that "where the appeal is based purely on questions of law, the appellant shall so state in his notice of appeal, and then no other questions shall be allowed, and the evidence need not be elevated."

The case at bar is clearly not one falling under the exclusive appellate jurisdiction of the Supreme Court. In the first place, the appellant expressly stated in his notice of appeal that the issues involved in the appeal are "mostly questions of law," an expression plainly not synonymous to "only errors or questions of law." In the second place, in accordance with his notice of appeal, the appellant has assigned in his brief several errors involving questions of fact. This, the appellant has undoubtedly the right to do, because in his notice of appeal he did not state that the appeal is "based purely on questions of law," as provided in section 3 of Rule 42 of the Rules of Court.

The present appeal, involving questions of fact and of law, falls within the exclusive appellate jurisdiction of the Court of Appeals (sec. 29, Rep. Act No. 296) and must therefore be certified to said court, pursuant to section 31 of Republic Act No. 296 which provides that "all cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it had originally been brought before it."

Wherefore, let this case be forwarded to the Court of Appeals for further proceedings.

Moran, C. J., Ozaeta, Feria, Pablo, Bengzon, Tuason, Montemayor, and *Reyes, JJ.,* concur.

Case forwarded to Court of Appeals for further proceedings.

[No. L-2668. September 30, 1950]

NATIONAL LEATHER CO., INC., plaintiff and appellant, *vs.* THE UNITED STATES LIFE INSURANCE CO., defendant and appellee.

INSURANCE; LIFE INSURANCE; NON-PAYMENT OF STIPULATED PREMIUM DUE TO WAR; FORFEITURE OF POLICY.—The nonpayment of premiums does not merely suspend but puts an end to an

insurance contract, since the time of the payment is peculiarly of the essence of the contract. The rule is not affected by the fact that the nonpayment is due to war or that the insured has not been negligent. (Ruling in the case of Constantino *vs.* Asia Life Insurance Company, G. R. No. L–1669, August 31, 1950, reiterated.)

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

David Guevara and *Jose G. Flores* for appellant.
Perkins, Ponce Enrile, Contreras & Gomez for appellee.

REYES, *J.:*

This is an appeal from a decision of the Court of First Instance of Manila dismissing plaintiff's action for the recovery of the proceeds of a life insurance policy. Though the amount sought to be recovered is only ₱10,000, the case has been elevated to this court by agreement of the parties upon representation that only questions of law are involved.

It appears from the stipulation of facts that plaintiff is a Philippine corporation with offices in the City of Manila, while defendant is a foreign life insurance company incorporated under the laws of New York, U. S. A., and licensed to do business in the Philippines (except during the period of the Japanese occupation) with main office in New York but with a branch office in Manila. On April 14, 1939, plaintiff insured with the defendant the life of Pedro Alejandrino for $5,000 under a 10-year term non-participating policy in consideration of the payment to the defendant, in advance, of the sum of $23.11 as quarterly premium beginning April 14, 1939, and the payment of a like sum every quarter thereafter, also in advance, for a period of 10 years or until the prior death of said Pedro Alejandrino. The stipulated quarterly premiums on the policy were regularly paid up to October 14, 1941, when the last quarterly premium payment was made, covering the period from that date to January 14, 1942. Thereafter no more premiums were paid, it appearing that, because defendant was an American corporation, its branch office in Manila was closed when that city was occupied by the Japanese forces on January 2, 1942, and it had remained closed during the entire period of enemy occupation. It was not reopened until March, 1945. Pedro Alejandrino died on September 23, 1943, that is, beyond the period covered by the premiums paid by the insured. But just the same, after the liberation of Manila in 1945, plaintiff, as the beneficiary named in the policy, made a claim for the proceeds thereof and tendered a check for ₱323.54, the total unpaid premiums from January 14, 1942, to October 14, 1943. Defendant, however, rejected the claim and returned the check on the ground

that the policy had ceased to be in force as of January 14, 1942, for non-payment of the stipulated premiums. It was to secure the judicial enforcement of this claim that plaintiff brought the present action and took this appeal when its complaint was dismissed by the court below.

Among the provisions of the policy issued by the defendant to plaintiff are the following:

"This policy is issued in consideration of the application therefor, copy of which application is attached hereto and made a part hereof, and of the payment, on or before delivery hereof, of the quarterly premium of $23.11 and of the payment of a like amount upon each 14th day of April, July, October and January hereafter during the term of ten years or until the prior death of the insured.

* * * * * * *

"*Payment of Premiums.*—Except as herein provided the payment of a premium or installment shall not maintain this policy in force beyond the date when the next premium or installment thereof is payable.

"All premiums are payable in advance at the Shanghai or New York City Office or to any agent of the company upon delivery, on or before date due, of a receipt signed by an executive officer, viz: the Chairman of the Board of Directors, President, Vice-President, Secretary, Assistant Secretary, Actuary, Assistant Actuary or Cashier of the Company and countersigned by said agent.

"A grace of one month or thirty days (whichever period is the longer) shall be granted for the payment of every premium after the first, during which time the insurance shall continue in force. If death occur within the days of grace the unpaid portion of the premium for the then current policy year shall be deducted from the amount payable hereunder.

"Upon written request therefor, approved by the company at its Shanghai or New York City Office, premium payments may be changed at any anniversary of this policy so as to be payable annually, semi-annually, or quarterly in accordance with the published rates in force at the date of issue of this policy. If this policy become a claim by death any unpaid portion of the annual premium for the policy year in which death occurs shall be an indebtedness to be deducted from the amount payable hereunder.

* * * * * * *

"*Reinstatement.*—If this policy shall lapse in consequence of default in payment of any premium, it may be reinstated at any time upon evidence of insurability satisfactory to the company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement."

As correctly stated by the appellee, the sole question at issue in this case is whether or not a life insurance policy lapses pursuant to its terms because of non-payment of the stipulated premium when such non-payment occurred at a time when the insurer and the assured were separated by the lines of war. This question, though new in this jurisdiction, has already been determined in the recent decision of this court in the case of Lopez de Constantino *vs.* Asia Life Insurance Company, G. R. No. L–1669, and that of Peralta *vs.* Asia Life Insurance Company, G. R. No. L–1670 (August 31, 1950). It would, therefore,

be idle to discuss the question again, it being sufficient for the purposes of the present action that we quote the following from that decision:

"Professor Vance of Yale, in his standard treatise on insurance, says that in determining the effect of non-payment of premiums occasioned by war, the American cases may be divided into three groups, according as they support the so-called Connecticut Rule, the New York Rule, or the United States Rule.

"The first holds the view that 'there are two elements in the consideration for which the annual premium is paid—First, the mere protection for the year, and, second, the privilege of renewing the contract for each succeeding year by paying the premium for that year at the time agreed upon. According to this view of the contract, the payment of premiums is a condition precedent, the nonperformance of which, even when performance would be illegal, necessarily defeats the right to renew the contract.'

"The second rule, apparently followed by the greater number of decisions, holds that 'war between states in which the parties reside merely suspends the contract of life insurance, and that, upon tender of all premiums due by the insured or his representative after the war has terminated, the contract revives and becomes fully operative.'

"The United States rule declares that the contract is not merely suspended, but is abrogated by reason of non-payment of premiums, since the time of the payments is preculiarly of the essence of the contract. It additionally holds that it would be unjust to allow the insurer to retain the reserve value of the policy, which is the excess of the premium paid over the actual risk carried during the years when the policy had been in force. This rule was announced in the well-known Statham [6] case which, in the opinion of Professor Vance, is the correct rule.[7]

"The appellants and some *amici curiæ* contend that the New York rule should be applied here. The appellee and other *amici curiæ* contend that the United States doctrine is the orthodox view.

"We have read and re-read the principal cases upholding the different theories. Besides the respect and high regard we have always entertained for decisions of the Supreme Court of the United States, we cannot resist the conviction that the reasons expounded in its decision of the Statham case are logically and juridically sound. Like the instant case, the policies involved in the Statham decision specifies that non-payment on time shall cause the policy to cease and determine. Reasoning out that punctual payments were essential, the court said:

"'* * * it must be conceded that promptness of payment is essential in the business of life insurance. All the calculations of the insurance company are based on the hypothesis of prompt payments. They not only calculate on the receipt of the premiums when due, but on compounding interest upon them. It is on this basis that they are enabled to offer assurance at the favorable rates they do. Forfeiture for non-payment is a necessary means of protecting themselves from embarrassment. Unless it were enforceable, the business would be thrown into utter confusion. It is like the forfeiture of shares in mining enterprises, and all other hazardous undertakings. There must be power to cut off unprofitable members, or the success of the whole scheme is endangered. The insured parties are associates in a great scheme. This associated relation exists whether

[6] New York Life Ins. *vs.* Statham, 93 U.S., 24, 23 Law ed., 789.

[7] Op. cit., 293. It is also the rule in West Virginia and Georgia. It adds to the Connecticut doctrine the duty to return the reserve value of the policy.

the company be a mutual one or not. Each is interested in the engagements of all; for out of the co-existence of many risks arises the law of average, which underlies the whole business. An essential feature of this scheme is the mathematical calculations referred to, on which the premiums and amounts assured are based. And these calculations, again, are based on the assuumption of average mortality, and of prompt payments and compound interest thereon. Delinquency cannot be tolerated nor redeemed, except at the option of the company. This has always been the understanding and the practice in this department of business. Some companies, it is true, accord a grace of thirty days, or other fixed period, within which the premiums in arrears may be paid, on certain conditions of continued good health, etc. But this is a matter of stipulation, or of discretion, on the part of the particular company. When no stipulation exists, it is the general understanding that time is material, and that the forfeiture is absolute if the premium be not paid. The extraordinary and even desperate efforts sometimes made, when an insured person is in extremes to meet a premium coming due, demonstrates the common view of this matter.

> " 'The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence.'

"In another part of the decision, the United States Supreme Court considers and rejects what is, in effect, the New York theory in the following words and phrases:

" 'The truth is, that the doctrine of the revival of contracts suspended during the war is one based on considerations of equity and justice, and cannot be invoked to revive a contract which it would be unjust or inequitable to revive.

" 'In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. The business of insurance is founded on the law of averages; that of life insurance eminently so. The average rate of mortality is the basis on which it rests. By spreading their risks over a large number of cases, the companies calculate on this average with reasonable certainty and safety. Anything that interferes with it deranges the security of the business. If every policy lapsed by reason of the war should be revived, and all the back premiums be paid, the companies would have the benefit of this average amount of risk. But the good risks are never heard from; only the bad are sought to be revived, where the person insured is either dead or dying. Those in health can get new policies cheaper than to pay arrearage on the old. To enforce a revival of the bad cases, whilst the company necessarily lose the cases which are desirable, would be manifestly unjust. An insured person, as before stated, does not stand isolated and alone. His case is connected with and co-related to the cases of all others insured by the same company. The nature of the business, as a whole, must be looked at to understand the general equities of the parties.'

"The above consideration certainly lend themselves to the approval of fair-minded man. Moreover, if, as alleged, the consequences of war should not prejudice the insured, neither should they bear down on the insurer.

"Urging adoption of the New York Theory, counsel for plaintiff point out that the obligation of the insured to pay premiums was

excused during the war owing to impossibility of performance, and that consequently no unfavorable consequences should follow from such failure.

"The appellee answers, quite plausibly, that the periodic payment of premiums, at least those after the first, is not an *obligation* of the insured, so much so that it is not a debt enforceable by action of the insurer.

" 'Under an Oklahoma decision, the annual premium due is not a debt. It is not an obligation upon which the insurer can maintain an action against insured; nor is its settlement governed by the strict rule controlling payment of debts. So, the court in a Kentucky case declares, in the opinion, that it is not a debt. * * * The fact that it is payable annually or semi-annually, or at any other stipulated time, does not of itself constitute a promise to pay, either express or implied. In case of non-payment, the policy is forfeited, except so far as the forfeiture may be saved by agreement, by waiver, estoppel, or by statute. The payment of the premium is entirely optional, while a debt may be enforced at law, and the fact that the premium is agreed to be paid is without force, in the absence of an unqualified and absolute agreement to pay a specified sum at some certain time. In the ordinary policy there is no promise to pay, but it is optional with the insured whether he will continue the policy or forfeit it. (3 Couch, Cyc. on Insurance, Sec. 623, p. 1996.)

" 'It is well settled that a contract of insurance is *sui generis*. While the insured by an observance of the conditions may hold the insurer to his contract, the latter has not the power or right to compel the insured to maintain the contract relation with it longer than he chooses. *Whether the insured will continue it or not is optional with him. There being no obligation to pay for the premium, they did not constitute a debt.*' (Noble *vs.* Southern States M. D. Ins. Co., 157 Ky., 46; 162 S. W., 528.) (Italics Supplied.)

"It should be noted that the parties contracted not only for peace-time conditions but also for times of war, because the policies contained provisions applicable expressly to wartime days. The logical inference, therefore, is that the parties contemplated uninterrupted operation of the contract even if armed conflict should ensue.

"For the plaintiffs, it is again argued that in view of the enormous growth of insurance business since the Statham decision, it could now be relaxed and even disregarded. It is stated 'that the relaxation of rules relating to insurance is in direct proportion to the growth of the business. If there were only 100 men, for example, insured by a company or a mutual association, the death of one will distribute the insurance proceeds among the remaining 99 policy-holders. Because the loss which each survivor will bear will be relatively great, death from certain agreed or specified causes may be deemed not a compensable loss. But if the policy-holders of the company or association should be 1,000,000 individuals, it is clear that the death of one of them will not seriously prejudice each one of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small.'

"The answer to this is that as there are (in the example) one million policy-holders, the 'losses' to be considered will not be the death of one but the death of ten thousand, since the proportion of 1 to 100 should be maintained. And certainly such losses for 10,000 deaths will not be 'relatively small.'

"After perusing the insurance Act, we are firmly persuaded that the non-payment of premiums is such a vital defense of insurance companies that since the very beginning, said Act 2427 expressly preserved it, by providing that after the policy shall have been in force for two years, it shall become incontestable (*i. e.*, the insurer shall have no defense) except for fraud, *non-payment of premiums*,

and military or naval service in time for war (sec. 184[*b*], Insurance Act). And when Congress recently amended this section (Rep. Act 171), the defense of fraud was eliminated, while *the defense of non-payment of premiums was preserved.* Thus the fundamental character of the undertaking to pay premiums and the high importance of the defense of non-payment thereof, was specifically recognized.

"In keeping with such legislative policy, we feel no hesitation to adopt the United States Rule, which is in effect a variation of the Connecticut rule for the sake of equity. In this connection, it appears that the first policy had no reserve value, and that the equitable values of the second had been practically returned to the insured in the form of loan and advance for premium."

We see nothing in the present case which would justify a departure from the ruling laid down in the above decision, according to which the nonpayment of premiums does not merely suspend but puts an end to an insurance contract, "since the time of the payment is peculiarly of the essence of the contract." The rule is not affected by the fact that the nonpayment is due to war or that the insured has not been negligent. There is, therefore, nothing to the argument that in this case plaintiff's failure to make premium payments after January 14, 1942, should be excused as being due, not to its own negligence, but to defendant's omission to make arrangements for the receipt of premiums that were to fall due during the period of enemy occupation. And, besides, as the trial court says in its decision, "* * * It is unreasonable to expect the defendant to send notice of its closing to the thousands of its insured in the Philippines immediately before and after the fall of Manila, because then such a step would be impracticable owing to the confusion and disorder occasioned by the war. Besides, even if such a notice were actually sent, defendant could not have received payments of insurance premiums because its offices were closed and its American officials interned upon orders of the Japanese authorities."

In view of the foregoing, the decision below is affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Tuason, and *Montemayor, JJ.,* concur.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 3834–R. October 5, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SOFIO NUEVAS and GABRIEL REMOLLO, defendants. SOFIO NUEVAS, defendant and appellant.

1. CRIMINAL LAW; ROBBERY; EVIDENCE; PROOF REQUIRED.—For the prosecution of the crime of theft or robbery, proof is necessary for the former existence and subsequent loss of the chattel belonging to a third person, and the taking of the same against the will of the owners. (U. S. *vs.* Guzman, 31 Phil., 494.)
2. ID.; ID.; ID.; STATE EVIDENCE MUST DEPEND ON ITS OWN STRENGTH TO SUSTAIN CONVICTION.—The prosecution should not depend upon the weakness of the defense, but upon its own strength to sustain conviction.

APPEAL from a judgment of the Court of First Instance of Leyte. Piccio, J.

The facts are stated in the opinion of the court.

Leon C. Nuevas for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Pacifico P. de Castro* for appellee.

PAREDES, *J.:*

Sofio Nuevas and Gabriel Remollo, charged in the Court of First Instance of Leyte, with the crime of robbery, were found guilty and sentenced each to an indeterminate penalty ranging from six (6) months of *arresto mayor* to four (4) years, two (2) months and one (1) day of *prisión correccional,* to indemnify the offended parties in the sum of ₱155.50, or suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. Only Sofio Nuevas interposed an appeal.

It appears from the evidence of the prosecution that at past 8 o'clock in the evening of September 28, 1947, while the spouses Victorio Mediona and Damiana Tisado were in their house located at Batug, Abuyog, Leyte, about to start a household prayer, Sofio Nuevas, the appellant herein, and Gabriel Remollo called out from below the main door and threateningly ordered the husband to come down. Victorio had to obey, and once downstairs, he was brought to a place for drying his copra about 20 meters away from the house, and there tied to a post (Exhibit B), with hands also tied behind him with a piece of string (hilo de vela) (Exhibit A), watched by a third man unknown to him. The accused demanded for his pistol and for money, specially referring to that allegedly paid by one Ramon Canalan for the redemption of a mortgaged land, and to the proceeds of certain copra sold

by Victorio. This told them that he paid the money to one Felix Sarena for the land bought from the latter. The accused left Victorio and went back to the house, and appellant threatened Damiana Tisado, Victorio's wife, with his revolver, and asked her where the other inmates were. Appellant also asked for their pistols and money, ransacked a trunk, unfolded the dresses in search of loot, while his companion was focusing the flash-light on the trunk. They took money in bills of ₱20 denominations, totalling ₱100, a saw, a flash-light and 4 khaki suits, valued at ₱10 a suit. As they were about to leave the house, the appellant, at the point of his gun, threatened to kill Damiana if the matter was reported or a complaint filed. Victorio likewise received the same threats from the accused. On January 7, 1948, Damiana saw the appellant in the cockpit owned by one Captain Olmedo, located in the same barrio, and denounced him to her brother, Policeman Enrique Tisado, who happened to be around, and caused his arrest. The appellant was brought to the municipal building, and on the following day, January 8, 1948, the corresponding complaint was filed. At that time appellant's co-accused Remollo was already in jail for another robbery charge. Neither the appellant nor his co-accused had made any admission.

The defense consisted in a general denial and *alibi*. Appellant Nuevas alleged that he was in his house the day before and the night of the occurrence, sick with beriberi, which had confined him there for months, and with rheumatism contracted during his *guerrilla* days. Accused Remollo denied knowledge of the robbery and declared that he was not acquainted with Damiana; and that he was in his house the whole day and night of the occurrence, said house being far from the municipality of Abuyog. He did not mention or implicate at all appellant herein. One Pedro Olmo testified that appellant was sick, having been confined in his house from the middle of August, 1947 up to October, with a swollen knee, unable to walk.

Upon the basis of the above evidence, the accused were convicted, and appellant now alleges, among others, that the trial court erred in denying the motion to quash, dated June 11, 1948, *appendix "A"* of the appellant's brief; and in declaring that the evidence presented at the trial was sufficient to convict the appellant.

Let us first take the kind of evidence presented to support the conviction. Even the trial court was in a quandary as to what to do with the charges of robbery when, during the trial, it remarked: "They may be convicted of 'allanamiento de morada' at least, if there is no convincing proof of the robbery charged." This doubt was stressed when, in the decision, His Honor declared: "While

the exact amount of money robbed may not exactly be fixed, still there could not be any doubt as to some valuables having been robbed, and these must have some value, be it only ₱1, and the court is not *altogether unwilling* to convict them for the robbery of this amount." These remarks of the trial court bring us to the inquiry of whether the offended parties then had the sum of ₱100 in paper money, inasmuch as neither money nor object of the information had been recovered. For the prosecution of the crime of theft or robbery, proof is necessary of the former existence and subsequent loss of the chattel belonging to a third person, and the taking of the same against the will of the owners. (U. S. *vs.* Guzman, 31 Phil., 494.) While Mediona stated that he received ₱600 as redemption payment of a certain mortgage from Roman Canalan and another ₱600 as payment of his copra, still it was shown that these amounts were used in paying Felix Sarena for a parcel of land bought by him. Damiana declared that when appellant was threatening her with death if she refused to produce her money, she told him *"we have no money* and I promised that as soon as we will sell copra, then they can return for that money * * *." (t. s. n., 19.) Under such predicament, a person would produce all that he had to save his life, and not to entertain his aggressors with empty promises. If Damiana told appellant, as she claimed, that they had no money, that was undoubtedly the truth, because their alleged ₱1,200 were already paid for the land bought by them.

The delay in prosecuting the case, does not speak well of the sincerity of the offended parties and their witnesses. The robbery was brought to the attention of the proper authorities, after the lapse of *four* months. The offended parties explained that the delay was due to fear of reprisal. Yet, from September 28, 1947 and every Wednesday thereafter, until January 7, 1948, the offended spouses, according to them, never missed to attend the cockpit in barrio Calsada, Abuyog, just for the purpose of apprehending the supposed criminals. This alleged fear of reprisal was unfounded. There was no reason for the spouses, specially Damiana, to be afraid of any one, because Sergeant of Police Enrique Tisado, who arrested the appellant at the cockpit, was her brother. Damiana's testimony that she wanted to keep silent about the matter and did not tell even to her brother, a peace officer, about the robbery, is unbelievable, to say the least. It would be taxing our credulity to the extreme, if we would be induced to believe that so important an event, where her husband was tied like a hog, maltreated and robbed, as alleged, could have silenced an aggrieved wife, who had every means at her command to protect herself from reprisals. Mediona, having been a *teniente del barrio,* knew what his duties were, regarding the incident.

The story of the witnesses for the prosecution is far from convincing. Mediona stated in his testimony in brief that he was *awakened* by the accused. On cross-examination, he again said: "Later because they *awakened* me and tied me and later on they passed by and ransacked my house." (t. s. n., 7.) Damiana also declared that they were awakened, which conveyed the idea that the spouses were already sleeping when the supposed robbers went to their house. If it is true that the spouses were already sleeping, then there is no truth that Ignacia had gone to the house of the said spouses to say the prayer for San Isidro. If there was any prayer to be said at that time in the house, they would not have slept until the old woman had said the prayer, or had returned to her home.

Ignacia declared that "at that time, after the prayers—and as the water was growing high, I had no companion either, I did not go home," and she passed the night in the house, only to state later, upon demand of a clarification of her hazy statement, that she went home (t. s. n., 14–15). Ignacia likewise declared that it was Gabriel Remollo who flashed the light on the trunk:

"M. Nuevas: And that you also said that Gabriel was the one lighting the flash-light towards the truck.
"A—Yes, sir." (t. s. n., 15.)

to be contradicted later by Damiana, who testified that Remollo brought merely a rifle, and that appellant brought a rifle carried in his right hand, and a flash-light held in his left hand and the "hilo de vela" (string).

Ignacia further testified: "I did not know about that but when I arrived she was kneeling yet" (t. s. n., 15), thereby conveying the idea that they were attacked upon her arrival at the house and before saying the prayer. In an earlier statement, however, she said: "Yes, sir; it took place *after* the prayer was said for San Isidro; but that was only our prayer for that saint" (t. s. n., 14), thus conveying a different thing, altogether.

It is also unbelievable that Ignacia had gone to the house in question on that night, unaccompanied, taking into account that her house was way off in the country. If, as found by the trial court, in those days there was "intense anxiety among the folks in remote barrios in this province, because of intermittent cases of banditry and murder that were taking place there * * *" and "peace and other conditions in the municipality of Abuyog and its suburbs were then in the state of nervous tension, and the people were gripped by fear of the recalcitrants who were residing in the vicinity," it can not be explained how and why this woman had dared to return that same night to her home, just after the alleged attack made on the spouses. The most prudent thing for her to have done

under the circumstances was to remain in the house of the spouses. Contradictions and incongruities of this kind, greatly affect the credibility of the witness, when her testimony is the only one which may be considered as unbiased, she being unrelated to the offended spouses.

Mediona, upon being questioned whether he knew the accused, declared: "Yes, they are relatives of my wife, and we were close friends to the father of Sofio during his lifetime." Damiana, on the same point, stated: "Yes, because they are my cousins. The father of Gabriel Remollo is the brother of my father." He (appellant) is my relative, but I do not know what degree." (t. s. n., 17.) If the accused were very well known to and were the relatives of the offended parties, and if their intention, as alleged, was to steal and harm said spouses, ordinary prudence would have dictated them to put up some disguise or adopt means to avoid their being recognized, taking into account the fact that then "it was moonlight—fullmoon" (t. s. n., 15), and "there was light" (t. s. n., 4), and the further fact that the said offended parties were close relatives of an agent of the authority, Sergeant Tisado of the police force of said town.

It may be asked: If the story of the spouses is not true, what, then, must have been the motive of this accusation? While it is not within the province of this court to delve into the mysteries of the human mind, we may venture to say that if the appellant ever went to to the house in question, it was to see some one. Damiana's testimony will shed light as to the object of the visit, for she said: "They went upstairs. Sofio Nuevas threatened me with his revolver, asking me where my companions were. *He asked also for my sister.* I told him that they are attending the fiesta in Biholbo * * *." (t. s. n., 17.) Even the trial court had some misgivings and doubts regarding the commission of robbery, when it said: "They may be convicted of *allanamiento de morada* at least, if there is no convincing proof of the robbery charged." (t. s. n., 16.) And, it is improbable that appellant who owned and cultivated his lands would have dedicated to the dangerous pastime of banditry. (t. s. n., 17.)

The *alibi* offered by the appellant was not accepted by the lower court, on the ground that it was not supported by "a more positive and convincing testimony." The prosecution, however, should not depend upon the weakness of the defense, but upon its own strength to sustain conviction. As has been stated, the evidence for the prosecution is inherently weak.

In view of the findings and conclusions reached, it is deemed unnecessary to pass upon the other errors assigned in appellant's brief.

There existing serious doubt as to the culpability of the appellant Sofio Nuevas, the court hereby acquits him, with costs *de officio*. So ordered.

Labrador and *Barrios, JJ.*, concur.

Judgment reversed.

[No. 3430-R. October 24, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MANSONGAYAN OSMEÑA, defendant and appellant

CRIMINAL LAW; HOMICIDE; A MORO WHO KILLS ONE OF HIS SEVERAL WIVES, IS GUILTY OF HOMICIDE, NOT PARRICIDE.—Although the customs of our Mohamedan brothers are tolerantly allowed by the government, and according to such customs a Moro may have several wives, yet, and for the purpose of the case at bar, the deceased cannot be considered a legal wife of the accused; hence, for killing the deceased, one of his wives, he is only liable for homicide and not for parricide.

APPEAL from a judgment of the Court of First Instance of Lanao. Ceniza, J.

The facts are stated in the opinion of the court.

Victor A. Arches for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Ramon L. Avanceña* for appellee.

FELIX, *J.:*

Accused of parricide in the Court of First Instance of Lanao, Mansongayan Osmeña was found guilty of homicide committed in an uninhabited place and sentenced to the indeterminate penalty of 10 years of *prisión mayor*, as minimum, to 18 years of *reclusión temporal*, as maximum, to indemnify the heirs of the deceased Guibonon Natangcop in the sum of ₱2,000, to the accessories of the law, and to pay the costs.

From this decision defendant appealed to us.

As examination of the records shows that according to the evidence for the prosecution Guibunon Natangcop, one of various wives of Mansongayan Osmeña, used to live in the house of her brother, Pinto Natangcop, in Romayas Maguing, Lanao. On or about September 1, 1944, appellant asked Guibunon to live with him in Taraka, but as Guibunon resented her husband's suspicion that she was in love with another man, she refused to accede to his request alleging, among other things, that appellant had fired a gun at her during their last quarrel. She further said that she would rather have her neck cut than go with appellant. For this reason, and upon the advice of Pinto, appellant had to go to Taraka alone in the morning of the following day. However, at about four o'clock in the afternoon of that day appellant reappeared

in Pinto's house carrying with him a dagger and a revolver, and upon learning that Guibunon had left for Lumbak Maguing, he turned red with anger, started right then to follow his wife, and finding her in the house of Manguinonca Katim asked Guibunon why she went to that place without his consent and whether she was there to see some men, thereby precipitating a wordy quarrel between them. Pacified later through the intervention of cooler heads, appellant and Guibunon left together, presumably for their house.

On the night of this same day appellant appeared in the house of the spouses Malituba Iman and Pantom Launto, the latter being a divorced wife of appellant by whom he had a daughter during their conjugal life. Appellant wanted to get his daughter and when Panton refused to give her child, he threatened her saying: "If you will not give me my child, you will be the next to be killed by me to Guibunon." This threat was overheard by Borac Magontong and Tangurac Langco, who immediately proceeded to Romayas and reported the matter to Pinto Natangcop who, in turn, immediately set out to search for his sister Guibunon. Accompanied by a party, Pinto went to Lumbak where he was informed by Manguinongca Katim that appellant had left with Guibunon, and when Pinto followed the trail from Lumbak to Taraka he found the lifeless body of Guibunon in a swamp about one kilometer from the house of Manguinonca, her body presenting three wounds: one on the right side of the back, the second below the left nipple and the third on the left forearm. In anger, Pinto assembled his men planning to go to Taraka and attack appellant, but he was pacified by the deputy governor of the province Kakai Dagalangit.

At the time of the killing of Guibunon there were no courts of justice functioning in the district where the crime took place, and the prosecution of offenses were handled by Capt. Ibrahim Macud, Regimental Commander of the 129th Infantry Regiment of the guerrillas, but that captain was not able to investigate appellant because the latter, being also a captain of the guerrilla, barricaded himself inside a cotta guarded by his men, and it was only after liberation when the authorities heard from appellant his version of the killing.

On September 2, 1945, appellant, following an order to all guerrilla officers, reported to the Replacement Battalion at Overton under the command of Mamarinta Lao, now captain of the Philippine Constabulary, who asked him whether it was true that he had killed his deceased wife. To this appellant answered: "I have killed her because she is of a type of woman where all will have to do the same as I have done." Subsequently a warrant of arrest was issued against appellant though in view

of the pacification policy of the army, Mamarinta did not serve it but instead went to appellant's house and only asked him to surrender his arms. There Mamarinta, in the presence of the District Mayor of Tamparan and Chief of Police at large Pendato, talked again to appellant about the death of Guibunon, and appellant admitted once more having killed his wife and repeated what he had previously told to Lao.

In September, 1944, Malamit Umpa, the present assistant provincial commander of the PC in Lanao, was Deputy Chief of Staff and Senior Aide to the Division Commander of the 108th Division of Lanao and received a report of Guibunon's death, but he was unable to see appellant until a year thereafter. Then appellant, in the presence of Captain Aguan and other people, again admitted to Umpa the killing of Guibunon, explaining that she had been cohabiting with other men, which was entirely against the Moro custom and tradition.

When after the institution of the present action Ismayatin Lucman, the lieutenant of the PC who filed the original complaint in this case, went to Taraka to see how he could accomplish a peaceful surrender of appellant, the latter admitted once more to Lucman that he had killed his wife because she was cohabiting with other men and had refused to live with him in Taraka.

The defense presented eight witnesses to support its theory and to establish the following facts: Guibunon Natangcop was the last of several wives of the accused, and because of her persistent demand that the latter divorce his other wives, which appellant refused to do as he preferred many wives who may not be so beautiful to one who may be very beautiful, Guibunon and appellant divorced themselves with the sanction of the father of the wife about 10 days prior to the latter's death. As a condition of their divorce appellant got back all his properties and two servants, Masonod and Sabel, who were very dear to Guibunon. Because of this, and also because Guibunon loved very much appellant who divorced her, she became despondent, worried and sad, to the extreme of crying for two days, and unable to forbear her sorrows, Guibunon committed suicide by stabbing her abdomen with a knife known as "ocab-ocab". Upon learning that his sister had committed suicide because of her divorce from appellant, Pinto Natangcop immediately imputed her death to the accused and gathered his men and followers to attack him in Taraka.

Kisol Ambola and Kondaraan Radiomoda corroborated each other's testimony to the effect that Guibunon Natangcop committed suicide and that her brother Pinto expressed his intention to attribute her death to the appellant. Kisol Ambola, a third degree cousin of both Guibunon and

Pinto, was staying with them in the house of the latter at the time of the alleged suicide, and she testified that Guibunon was despondent because appellant refused to divorce his other wives and instead divorced her and got back all his properties including the two aforementioned maids; that about supper time on that Friday night, deceased's mother went to her room and "approached her to take their meal," but found her dead; and that when Pinto arrived and learned of the death of his sister as well as the cause of the same, he decided to lay the blame on and impute the death of Guibunon to appellant.

On his turn, Kondaraan Radiamoda who is from Taraka, the place of appellant, testified that on that particular Friday night and for two days since, he had been staying in the house of his uncle at Ramayas to buy palay; that on that particular night he heard a commotion in the house, and upon seeing many people going up the house, he also went up there and heard Pinto say that Guibunon killed herself because of appellant and, therefore, that the latter was to be blamed for her death, and they should, therefore, ascribe her demise to appellant; and that he also saw and heard Pinto gather his man for the purpose of looking for his brother-in-law, so on the following day this witness returned to his home town and informed Mansongayan Osmeña of what transpired in Pinto's house.

The spouses Hadji Malituba Iman and Panton Launto, in whose house according to Horac Mangontong he and his companion Tagurac Langco had been on said Friday night and had seen and overheard appellant say that if Panton would not deliver to him his daughter by her he would also kill Panton next to Guibunon, denied that either Mangontong or Langco was in their house on that particular night, or on any other night before or thereafter, and declared that neither on that particular night nor two or three nights thereafter did appellant go to their house to demand his daughter by Panton, and, consequently, that appellant could not have said or admitted on said night that he had killed Guibunon Natangcop, as claimed by those two witnesses for the prosecution.

The defense further presented Faunte Desare to belie the testimony of Capt. Halamit Umpa that the accused admitted to him having killed Guibunon Natangcop during their conversation in the office then occupied by the Judge of the Court of First Instance during the trial of this case.

The accused testifying in his behalf, declared that before he married Guibunon Natangcop he had already married six other women of whom his wife Paipo was the first; that ten days more or less previous to the death of Guibunon Natangcop he divorced her, and got all his property including the maids Masonob and Sabel who were very

dear to the deceased; that because of this and also because Guibunon loved him very much, she became very sad, worried and despondent and had been crying for two days; that on that day, Friday, from about four o'clock in the afternoon till some time before midnight, he was praying in the mosque together with his wife Ompia, as it was fasting season and a day of prayer for Mohammedans; that the following day, Saturday, he was informed by Kondaraan Radiamoda that Guibunon committed suicide the previous evening and that her brother Pinto had planned to impute to him her death, hence he refrained from going to Ramayas as lief he would to avoid trouble. Appellant further denied having admitted to Malamit Umpa, Mamarinta Lao, Ismayatan Lucman, or to anybody else that he had killed Guibunon Natangcop.

After weighing the evidence on record, the lower court gave more credence to the witnesses for the prosecution, and, as stated before, found the defendant liable for the death of Guibunon Natangcop; and because the trial judge declared in his decision:

"(1) that the allegation of the accused that on the day of the date in question, up to late at night thereof, he was in the mosque praying, was an *alibi* not sufficiently proven;

"(2) that there was no reason whatsoever for Guibunon Natangcop to commit suicide;

"(3) that it was clearly proven that the deceased Guibunon Natangcop had three wounds in her body, which made it unlikely that she committed suicide;

"(3) that it was most unbelievable for Pinto Natangcop, elder brother of the deceased, to have expressed immediately upon learning of the death of his sister, his determination of imputing her death to appellant,

"(5) whom the court believed to have really made admissions that he had killed her,

"(6) thus finding that the truth lies in the theory of the prosecution and not in that of the defense, and

"(7) that the accused was guilty of simple homicide, with the attendance of the aggravating circumstance of the crime having been committed in an uninhabited place, instead of acquitting him for lack of sufficient evidence, or at least, on reasonable doubt."

counsel for appellant maintains that the lower court erred in these respects.

After going over the proofs, we find no reason to alter or modify the findings of the trial judge who had opportunity to examine and observe the demeanor of the witnesses while testifying. Furthermore, there is absolutely lack of motive on the part of Lieutenant Lucman, Captain Lao and Assistant Provincial Commander Umpa to falsely testify against appellant if the facts on which they declared were not true. On the contrary, and because of their official positions, these witnesses have in their favor the presumption of truthfulness (People *vs.* Ylanan, 34 Official Gazette 1238; People *vs.* Hernand, SC–R. G. No. L–12, December 17, 1945).

Appellant's version that Guibunon Natangcop committed suicide because he divorced her, and that Pinto fabricated this charge in order to avenge her death, does not, as pointed out by the Solicitor General, deserve any serious consideration: *firstly*, because appellant's alleged divorce from Guibunon has no other support than appellant's lone declaration, and her pretended love for him as the impelling cause of the suicide seems to be ridiculous in the light of the evidence on record; *secondly*, because the record shows no reason why Pinto would ascribe his sister's death to appellant, for there would be no reason for avenging a self-inflicted death, and, certainly, the testimonies of Ambola and Radiamoda are not worthy of credence; and *thirdly*, because we agree with the trial judge that appellant's evidence to establish his *alibi* has not satisfactorily established this defense. The testimonies of appellant, of his wife Ompia and of his body-guard Potano Makalipot are insufficient to bolster a defense that is conceded to be inherently weak. Anyway the proof of said alibi on record cannot overcome the evidence of the prosecution pointing appellant as the killer of his wife Guibunon. Even if we were to disregard the testimonies of Borac Mangontong and of Tanguraoc Langco and to consider as true what the spouses Malituba Iman and Panton Launto said that appellant had never threatened the latter by saying that, "If you will not give me my child, you will be the next to be killed by me to Guibunon," because appellant had not been at all in their house on the occasion refered to, yet, we have the testimonies of the officials of the Constabulary who declared that appellant admitted to them having killed his now deceased wife Guibunon.

It appears from the record that the body of Guibunon Natangcop was found in a swamp, 3 fathoms away from the road, but there is no evidence as to where the killing was actually done, nor that it was in an uninhabited place, and as indicated by the Solicitor General we cannot appreciate said aggravating circumstance against appellant.

Although the customs of our Mohammedan brothers are tolerantly allowed by the government, and according to such customs a Moro may have several wives, yet, and for the purposes of this case, we cannot consider Guibunon Natangcop a legal wife of the defendant, and concur in the finding of the lower court that appellant is only liable for homicide and not for parricide.

Wherefore, we find Mansongayan Osmeña guilty of homicide, and there being no aggravating or mitigating circumstances attending the commission of the offense the imprisonment penalty that shall be imposed upon him shall be from eight (8) years and one (1) day of *prisión mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal*. With this modification

as to the imprisonment penalty, the decision appealed from is hereby affirmed in all other respects. With costs against appellant. It is so ordered.

Jugo, Pres. J. and *De la Rosa, J.*, concur.

Judgment modified.

[No. 5007-R. October 25, 1949]

PABLO AMORANTO, petitioner, *vs.* THE DIRECTOR OF PRISONS, respondent

PLEADING AND PRACTICE; HABEAS CORPUS, ORIGINAL PETITION OF; PROCEDURE TO BE FOLLOWED WHEN COURT OF APPEALS LACKS JURISDICTION ON PETITION.—An original petition of habeas corpus which is not in aid of the appellate jurisdiction of the Court of Appeals and, therefore, beyond the jurisdiction of said court, cannot be certified to the Supreme Court for not being an appealed case. The proper procedure for the Court of Appeals to follow in this case is to dismiss the petition. (Resolution of the Supreme Court, dated Nov. 5, 1947, in the case of Facundo *vs.* Garcia et al.; See Lawyer's Journal, February 28, 1949, p. 61.)

ORIGINAL ACTION in the Court of Appeals. *Habeas Corpus.*

The facts are stated in the opinion of the court.

Pablo Amoranto in his own behalf.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Rafael F. Cañiza* for respondent.

ENDENCIA, *J.:*

This is an original petition for *Habeas Corpus* filed with this court wherein it is prayed that after due hearing the Director of Prisons be forthwith ordered to release the petitioner from his illegal confinement.

Petitioner alleges: (1) that he was convicted of estafa by the Municipal Court of Manila, the Justice of the Peace Court of Mandaluyong, Rizal, and the Court of First Instance of Manila, in the following manner:

Case No.	Sentence	Court	Date
"1. B-13921	4 months	Mun. Court of Manila	8-16-48
"2. B-13922	4 months	Mun. Court of Manila	8-16-48
"3. B-13920	4 months	J.P.C. Mandaluyon, Rizal	3-8-49
"4. 2224	2 mos. 1 da.	Mun. Court of Manila	10-8-48
"5. 7707	2 mos. 1 da.	C.F.I. of Manila	10-5-48;"

(2) that the most severe of the penalties imposed upon the petitioner, as could be seen above, is four (4) months; (3) that in accordance with the provisions of article 70 of the revised Penal Code, as amended by Commonwealth Act No. 217, the petitioner should serve a penalty of not more than twelve (12) months and six (6) days; (4) that the petitioner has commenced to serve his sentence on August 16, 1948, so that at the filing of the petition, he has already served more than the three-fold of the most severe penalty imposed upon him; and (5) that

notwithstanding this fact, he is until now detained by the Director of Prisons and such detention is completely illegal, it being counter the provisions of article 70 of the Revised Penal Code, as amended.

Answering the petition in behalf of the respondent Director of Prisons, the Solicitor General states that he has no valid objection to the petition because according to the record of the cases mentioned therein, the petitioner's aggregate penalty is one (1) year, five (5) months and two (2) days, including subsidiary imprisonment, and said petitioner has ever-observed already said maximum aggregate penalty, but he recommends that this case be certified to the Honorable Supreme Court for its final decision on the ground that it falls under the latter's jurisdiction.

Undoubtedly, the petition now in question is not in aid of the appellate jurisdiction of this court and according to section 30 of Republic Act No. 296, otherwise known as the Judiciary Act, "the Court of Appeals shall have original jurisdiction to issue writs of *mandamus, prohibition, injunction, certiorari, habeas corpus,* and all other auxiliary writs and process *in aid of its appellate jurisdiction.*" We therefore concur with the Solicitor General that the present original petition of *Habeas Corpus* is beyond the jurisdiction of this court, but we disagree with his recommendation that it be certified to the Supreme Court for the present case being not an appealed case, it cannot be certified to the Supreme Court, pursuant to the ruling handed down in the case of Facundo *versus* Garcia *et al.*, where it was held:

"In special civil action for *certiorari*, CA-G. R. No. 1566-R, Facundo, petitioner, *vs.* Judge Garcia et al., respondents, being certified by the Court of Appeals to this court, the latter resolved to return said case to the Court of Appeals upon the ground that, unlike in ordinary appealed cases, special civil actions of the nature of the case at bar may not be certified to the Supreme Court by the Court of Appeals under section 145-H of the Revised Administrative Code. We agree with the proposition that the present case could not be certified by the Court of Appeals to the Supreme Court. Having arrived at the conclusion that it has no jurisdiction over the case, the proper procedure for the Court of Appeals was to dismiss it. If petitioner is agreeable with the conclusion of the Court of Appeals that the litigation belongs to the exclusive jurisdiction of the Supreme Court, he may file a new petition with the latter. If he disagrees, he may seek relief from the Supreme Court to compel the Court of Appeals to decide the case." (Resolution of the Supreme Court, dated November 5, 1947, in the case of Facundo *vs.* Garcia et al., See Lawyer's Journal, February 28, 1949, p. 61.)

Wherefore, petition now under consideration is hereby dismissed, without cost and prejudice to its refiling with the Supreme Court.

Rodas and *Ocampo, JJ.*, concur.

Petition dismissed.

[No. 3775-R. October 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JUAN R. TRINIDAD, defendant and appellant

CRIMINAL LAW; ESTAFA; PLEADING AND PRACTICE; STATUTE OF FRAUDS, NOT APPLICABLE TO CRIMINAL ACTIONS.—The statute of frauds does not apply in a criminal action which is neither for a violation of contract nor for the performance thereof and which was brought solely to have the accused penalized for alleged false representations he made and which supposedly led the offended parties to deliver to him certain sums of money (37 C. J. S. p. 550).

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

Nicanor M. Lapuz for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Esmeraldo Umali* for appellee.

GUTIERREZ DAVID, *J.:*

This is an appeal of Juan R. Trinidad from the judgment of the Court of First Instance of Manila finding him guilty of the crime of *estafa* and sentencing him to an indeterminate penalty ranging from two (2) months and one (1) day of *aresto mayor* to one (1) year and one (1) day of *prisión correccional,* with the accessory penalties of the law, to idemnify the offended parties in the sum of ₱860, with subsidiary imprisonment in case of insolvency, and to pay the costs.

It appears that prior to February 23, 1947, the estate known as "Hacienda de Nuestra Señora de Guia," located in the district of Tondo, Manila, was the property of the Roman Catholic Church and was administered by the Monte de Piedad. On the aforesaid date, the government acquired it from the church and its management was given to the Rural Progress Administration. Before said transfer of ownership, the estate was occupied by tenants, who, in 1937, formed an association known as "Araw Na" of which the herein accused was the founder and its president since the organization of the association until the filing of this case. The bonafide tenants of the estate were treated as purchasers with the right to pay the price of their respective lots in installments, for a period of ten years.

The incriminating acts attributed to the herein accused were related by the alleged offended parties, Cecilio Buenafé, Alvaro Beronilla and Marcela Patawaran, as follows:

TESTIMONY OF CECILIO BUENAFE

In January, 1945 or 1946, he constructed a house at No. 454 Tayuman, Manila, on a lot forming part of the said estate. While he was constructing the house, the ac-

cused approached him introducing himself as the administrator of the said estate and that he was authorized by Malacañan and he was representing the government with the authority regarding the issuance of building permits. He asked Buenafé to pay ₱10 for the issuance of the permit otherwise the latter would not be allowed to continue building his house. Believing in said representations of the accused, Buenafé delivered to him the sum of ₱10 for which the accused did not issue any receipt. For the second time the accused saw him and asked him to pay ₱200 as the cost of the lot on which he, Buenafé, was building his house. The accused told him that he would issue an official receipt later on. He paid the defendant the sum of ₱200 as the price for the lot.

On cross examination, he testified that he knew the accused since 1945 or three months before he paid ₱10 to the later. He knew that the lot on which he was building his house belonged to the government because that was what he heard since August 1945. Although knowing that the lot belonged to the Government, he paid ₱10 to the accused because the latter assured him that he was going to take care of the permit. He was first lieutenant in the Cavalry of the United States Army and an auditor of said Army since 1945. When he started to build his house he did not secure any permit or conformity from the Government whom he believed to be the owner of the lot. He asked the persons of the neighborhood whether they acquired permits from any person before they built houses of their own and they answered that they did not. He filed a written application with the city officers for a permit to construct his house but the application was denied on the ground that it was not accompanied by the consent of the state of "Nuestra Señora de Guía." At the time he paid the ₱10 to the accused he was living with his uncle, Alvaro Beronilla, whom he knew was also claiming a lot besides or near Buenafé's lot. He inquired from his aforesaid uncle, Mr. Beronilla, if the payment for permit was really required before any person could construct a building on any lot of the estate. Mr. Beronilla answered him in the affirmative and told him that the amount should be paid to Mr. Trinidad, the herein accused. He knew that the lot on which he constructed his house did not belong to the accused and that the latter was not an agent of the city treasurer nor of the city engineer, but he introduced himself as the representative of Malacañan. He asked the accused to exhibit his appointment upon which he based his authority, and the latter refused saying that it was not necessary and, instead, he showed a picture of his with the late President Quezon. He went to see the accused for the receipt of the ₱10, but the latter instead of giving the receipt asked for another payment of ₱200

as the cost of the lot, telling him that somebody had paid the sum of ₱200 for said lot and that this "somebody" was asking the accused to pay him that ₱200. Contradicting his previous testimony, he asserted that he did not pay the accused said sum because he knew that his uncle, Alvaro Beranilla, had already paid for the lot since 1943 or 1944 in the amount of ₱200.

TESTIMONY OF ALVARO BERONILLA

This complaining witness testified that about October or November, 1943, he occupied three lots in the above-mentioned estate for which he paid the defendant the sum of ₱700 in the belief that the latter was the owner of said lots because he was selling them. He paid ₱200 for each of two lots and ₱300 for another. The accused refused to issue receipts for said amounts and he did not insist because he had complete confidence in the former, he being the president of their association "Araw Na". He occupied the three lots for which he paid the aforesaid amount of ₱700. He did not demand the return of his money because he and his neighbors occupy those lots until now.

In the cross examination, he declared that he knew the accused since 1938. In 1939 having seen a vacant lot in the estate, he made inquiries with the Bureau of Lands for the purpose of occupying some part thereof. In the Bureau of Lands he was told not to occupy those lots because the estate belonged to the "Nuestra Señora de Guía" and that he should better choose one along the *estero* since the lots in this place were public lands. Then he went to the place and cleaned a lot. He discovered that the land he cleaned belonged to the accused. Inasmuch as he did not want to have any trouble with the accused, he went to see the latter and inquired about the matter. He was informed by the people in the neighborhood that the accused was the owner of that lot. The lots where he and his neighbors erected their house, according to the information he had from the Bureau of Lands, were public lands, yet he paid the accused the sum of ₱700 for said lots to avoid trouble and because he wanted those lots for his children. Previously he bought another lot from the accused for ₱70 but the latter took it back from him. When liberation came the accused sold the last mentioned lot to "somebody" else. That "somebody" built his house on it. Said lot was not the one occupied by Cecilio Buenafé because the lot of the latter was acquired by Buenafé himself and paid the sum of ₱200 therefor. The latter lot was among the three which he, (the witness) bought from the accused. He was a member of the association "Araw Na" since 1940 or 1941. He was already a member of said association when he bought the three lots. He remembers having received a letter from the accused concerning the protest to the witness' occupying those lots within the hacienda "Nuestra Señora de Guía."

It is possible that he signed one envelope, Exhibit 5–A acknowledging receipt of the letter marked as Exhibit 5 contained therein and in which he was asked to vacate the aformentioned lots. It was the accused who gave the lot to Buenafé. He was never bothered in his possession of the lots which he bought from the accused for the sum of ₱700 and he did not pay any amount to any other person for said lots. He occupied more than three lots in the estate. He became a member of the association because it was his intention to have the government buy those lots which he occupied. He know beforehand that the lots he occupied belonged to the hacienda "Nuestra Señora de Guía," and not to the accused, but the latter made him understand and insisted that he was the owner thereof.

TESTIMONY OF MARCELA PATAWARAN

The accused, representing himself as administrator of the hacienda "Nuestra Señora de Guía" with authority to dispose of the lots of said estate, came to see her in May, 1946. Having given credence to such representations, she, on behalf of her first cousin, José P. Silverio, delivered to the accused the sum of ₱150—instead of ₱200 as demanded by the accused—as payment of a lot in said estate.

The above testimony of the three complaining witnesses was not corroborated. There are no receipts for the amount which the accused has allegedly demanded and received from them. Moreover, contradictions and inconsistencies are clearly noticeable in their testimony. For instance, Buenafé averred that he paid the accused ₱200 for the lot, and later on he asserted that he did not pay said amount because he knew that his uncle, Alvero Beronilla had paid ₱200 for the lot since 1943 or 1944. On this point Beronilla, in a portion of his testimony, said that Buenafé himself acquired from the accused the lot on which the former built his house paying the latter therefor the sum of ₱200. Then he said that the accused was the one who gave the lot to Buenafé.

It is highly incredible that Buenafé, a first lieutenant and auditor in the U.S. Army would give ₱10 for the building permit, without insisting in getting the corresponding receipt or the permit itself which he needed so that he could continue the construction of his house. It is also unbelievable that the accused could have made the alleged representations that he was representing the government or Malacañan at the time he allegedly demanded and received money from Buenafé (January 1945 or 1946) or from Marcela Patawaran, in May, 1946, because at that time the government had not yet acquired the estate of "Nuestra Señora de Guía." It was only on February 23, 1947 that the government purchased said estate from the church and turned over its management to the Rural Progress Admin-

istration. Buenafé, a close relative and a neighbor of Beronilla, who was an old member of the "Araw Na", should have known that the government, which the accused purported to represent, had nothing to do with the estate. In fact, when he allegedly tried to apply for a building permit from the city authorities, before paying ₱10 to the accused, he was told by said authorities that he should accompany his application with the consent of the "Nuestra Señora de Guía" estate. Besides, Beronilla expressly declared that he paid ₱700 to the accused for the lots which he, Beronilla, and his neighbors are occupying until now, their possession thereon not having ever been disturbed, and that for this reason he never demanded from the accused to return his money. And there is no showing that said lots thus sold belonged to other persons or entities or that Beronilla was ever required to pay for them to the government or the estate of "Nuestra Señora de Guía."

On the other hand, it appears from the uncontradicted evidence for the defense, that in 1939, when Alvaro Beronilla became a member of the "Araw Na", he was occupying only one lot in the aforesaid estate. During the Japanese occupation, however, he asked permission to plant on some vacant lots in said estate whose occupants had evacuated to other places. He was thus able to occupy about six other lots. After the liberation when the former occupants thereof returned, he was told by the accused to vacate those lots and surrender them to their lawful occupants. The accused was acting as president of the "Araw Na" and under the authority given to him by the Assistant Manager of the Rural Progress Administration, Mr. Ricardo Gonzales Eloret, to settle conflicts over possession of lots in the "Nuestra Señora de Guía" estate (Exhibit 3). Instead of vacating said lots, Beronilla made his friends and relatives—among whom was Cecilio Buenafé—build their house thereon.

About May 29, 1946, one Feliciano Bautista came to see the accused claiming that Beronilla had lumber prepared and about to construct a house on the lot which was cleared by said Feliciano Baustista. The accused went to see Beronilla and inspite of the latter's claim that the lumber placed on that lot was not his, he was ordered by the accused not to build on that lot and commissioned Elias Pérez to investigate the matter. Inspite of this, Beronilla went on with the construction so the accused sent him a letter, Exhibit 5, on the envelope of which Exhibit 5–A, Beronilla signed a note acknowledging receipt thereof. In said letter, dated May 29, 1946, the accused told Beronilla that he had no right to build houses on the lots cleared, levelled and fenced by Feliciano Bautista and Teodoro Pastor, both members of "Araw Na", and threatened to bring him into court.

Once the accused held a meeting of the tenants in front of the house of Buenafé and then and there denounced publicly that Beronilla and Buenafé were squatters for they occupied lots belongings to prior bona-fide occupants of the estate.

In the investigations conducted by order of the accused it was found out that the lot on which Cecilio Buenafé constructed his house belonged to Capt. Carlos Nocum who deposited with the Rural Progress Administration the sum of ₱30, (Exhibit 6), and that it was illegally occupied by Buenafé with the aid of Beronilla and that the lot belonging to Vicente de la Cruz for which the latter made the corresponding deposit with the Rural Progress Administration was illegally occupied by Beronilla (Exhibits 17 and 17–A). Likewise the lot belonging to Maria Militante who made the necessary deposit, was also illegally occupied by Beronilla (Exhibits 18 and 18–A).

In the belief that a certain guerrilla by the name of Abraham Layug had died when he evacuated to Pampanga, Marcela Patawaran, through the recommendation of Councilor Gregorio M. García—who was then the legal adviser of the "Araw Na"—was permitted by the association "Araw Na" to occupy the lot of said Layug. Later on Marcela asked the accused to have her right over same lot transferred to her relative José P. Silverio. After an investigation, the accused acceded to said transfer and signed the certificate of membership, Exhibit A, in the name of Silverio. It happened, however, that Layug, after liberation, appeared, claimed and occupied the lot. Marcela Patawaran was then dispossessed of said lot.

About fifteen of the persons having conflict with prior occupants protected by the "Araw Na" denounced said association and specially its president, the herein accused, to the Secretary of the Interior through Mayor Fugoso of the City of Manila (Exhibit X). The charges were that the accused as president of the "Araw Na" was exploiting the tenants of the estate. On the strength of the testimony of the herein complaining witnesses the present case was filed by the City Fiscal's Office in the court below.

The foregoing facts proven by the defense and duly supported by documents were not rebutted by the prosecution.

On the whole case, the court finds the unsupported declarations of the complaining witnesses to be lacking of that coherence and consistency needed to engender conviction of the truth of the charge. Moreover, the court is inclined to believe that said witnesses were obviously biased. They had ulterior motives in testifying as they did because the possession of Beronilla and Buenafé on some lots of the estate was and is vigorously questioned and protected to by the association "Araw Na", particularly by the herein appellant, as president of the association. Said witnesses were publicly denounced by the latter

as squatters or land grabbers. And Marcela Patawaran lost the lot for which she applied in the name of her cousin, the accused and the association having been instrumental in its recovery by the prior rightful occupant, Abraham Layug.

The guilt of the appellant not having been proven in the measure required by law, the court finds his assignments of error to be well taken. His contention, however, that under the statute of frauds, the testimony of the complaining witnesses was not admissible to prove that appellant sold the lots to them and they delivered to him the different sum mentioned is untenable. The statute does not apply in this criminal action which is neither for a violation of contract nor for the performance thereof and which was brought solely to have the appellant penalized for the alleged false representations he made and which supposedly let the offended parties to deliver to him the aforesaid sums of money (37 C. J. S. p. 550.)

Wherefore, the appealed decision is, hereby, reversed; and the appellant acquitted and ordered released from the custody of the law, with costs *de oficio*.

Reyes and *Ocampo, JJ.*, concur.

Judgment reversed; accused acquitted.

[Nos. 3483–R and 3484–R. November 29, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VALERIANO DIZON y ALVAREZ, accused and appellant.[1]

1. CRIMINAL LAW; NO CRIME OF ESTAFA THROUGH FALSIFICATION OF PRIVATE DOCUMENT; CRIME COMMITTED IS FALSIFICATION OF PRIVATE DOCUMENTS WITH PREJUDICE TO A THIRD PERSON.—There is no crime known as *estafa* through falsification of a private document, for the reason that the falsification of a private document, to be punishable, requires damage to a third person and that damage, in the present case, is the conversion to his own use of the amount collected through the use of falsified private documents. (People *vs.* Reyes, 56 Phil., 286). The crime, therefore, committed in the instant case is that of falsification of private documents with prejudice to a third person and not *estafa* through falsification of private documents.

2. ID.; ID.; ID.; FALSIFICATION OF TWO PRIVATE DOCUMENTS WITH PREJUDICE TO A THIRD PERSON, TWO CRIMES.—The falsification of two private documents with prejudice to a third person constitutes two crimes. (U.S. *vs.* Infante et al., 36 Phil., 146.)

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

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[1] *See* Resolution of the Supreme Court in G. R. No. L–3586 of February 28, 1950. Appeal by certiorari was dismissed.

Jose H. Tecson for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Ramon L. Avanceña* for appellee.

JUGO, *Pres. J.:*

Valeriano Dizon was accused of *estafa* before the Court of First Instance of Manila in criminal case No. 3717; and of *estafa* through falsification of private documents in criminal case No. 3718. On agreement of the parties, with the approval of the court, the two cases were tried jointly. After trial the defendant was convicted in both cases. In criminal case No. 3717, he was sentenced to suffer from four (4) months and eleven (11) days of *arresto mayor* to one (1) year and ten (10) months of *prisión correccional,* to indemnify the offended party in the sum of ₱11,474.75, with subsidiary imprisonment in case of insolvency, and to pay the costs; and in criminal case No. 3718, to suffer from one (1) year, eight (8) months and twenty-one (21) days to four (4) years, nine (9) months and eleven (11) days of *prisión correccional,* to pay a fine of ₱4,000, to indemnify the offended party in the sum of ₱814.80, with subsidiary imprisonment in case of insolvency, and to pay the costs. From both judgments, the defendant appealed.

It has been proved by the evidence for the prosecution that from the year 1946 to June 30, 1947, the appellant was an agent and collector of Vicente Co Chien who was doing business under the registered name of Vilco Trading Company with offices at Binondo, Manila.

In regard to case No. 3717 (CA–G. R. No. 3483–R), in the afternoon of June 30, 1947, the appellant presented himself to the police outpost on Calle Vito Cruz with a wound on his forehead, soaked in mud, complaining that he had been the victim of a holdup at the intersection of Azcarraga and Elcano streets, Manila, shortly after four o'clock that same afternoon. Before that time he was in Rizal City making collections for the Company. At four o'clock in the afternoon he boarded a vehicle and proceeded to his office. When he reached Calle Azcarraga near its intersection with Elcano, the driver and conductor of a jeepney ordered him to board said vehicle. There they seized from him his .45 calibre pistol. The jeepney proceeded to Vito Cruz and near the garbage dump on one side of said street, they hit him on the head, causing him to lose consciousness and left him at a side of the road. When he recovered consciousness he found himself soaked in mud, his head bleeding and the money which he had collected gone, but his bag containing the receipt book (Exhibit B), which contained the receipts (Exhibits B–1 to B–16) and some other papers, was left with him. He called a jeepney and proceeded to the police outpost on

Vito Cruz and was taken by some policemen to the Philippine General Hospital. After his wound had been dressed, the policemen turned him over to the Detective Bureau at the Bilibid Compound for investigation.

At the Detective Bureau the appellant related the above story, but Detective Turingan found it difficult to believe him. Upon inquiry from the doctor who had treated the appellant, Turingan learned that the defendant could not have been unconscious at any time, for the reason that the wound was superficial. Turingan went out to inquire from the customers who were alleged to have paid the accounts shown in Exhibits B–1 to B–16 and brought two of them to headquarters. Confronted with these two customers, the appellant revealed the true facts, saying that the holdup was just an attempt made by him to justify his inability to turn over the sum of ₱15,594.75 to his principal and that the wound on his forehead had been inflicted by himself with his revolver. This confession appears in Exhibit A, which was voluntarily made by him.

The shortage of the appellant was ₱15,594.75 which he had been misappropriating for his own use during the period of six months before June 30, 1947. The duplicate receipts, Exhibits B–1 to B–16, correspond to receipts Nos. 3012 to 3027 of the Vilco Trading Company.

In case No. 3718 (CA–G. R. No. 3484–R), it was proved that on March 22, 1947, the appellant collected from Co Pien the sum of ₱3,000 for the Vilco Trading Company. The appellant issued to Co Pien the original receipt, Exhibit D–2, for ₱3,000, but he entered in the corresponding duplicate receipt, Exhibit D–1, the sum of only ₱2,350, which he delivered to the Company, appropriating for himself the difference of ₱650.

On May 20, 1947, the appellant collected from Chuan Lam the sum of ₱1,288 for the Vilco Trading Company and issued to him the proper original receipt, Exhibit C–2. However, in the corresponding duplicate receipt, Exhibit C–1, he entered the sum of only ₱1,123.20, which he turned over to the Company, retaining for himself the difference of ₱164.80.

The appellant insists that he had really been held-up and that he had signed the statement Exhibit A in the Detective Bureau without knowing its contents.

As to the alleged holdup, we quote with approval the following remarks made by the trial court:

"The court made a study of the alleged holdup. The story does not jibe with what is known to happen in the ordinary course of events. The place where he was allegedly told by the driver and the conductor to get into the jeep was Calle Azcarraga near Calle Elcano. The time was shortly after 4 o'clock. The court may well take judicial notice (and this is admitted by the accused himself) of the fact that at that time and in that place there are usually so many vehicles and so many pedestrians milling around.

It is therefore taxing too much the credulity of the court to make it believe that the accused could have been held up in such a busy place and at the peak hour of the day. As a rule, holduppers possess the instinct of self-preservation. It would have taken a long time for the hold-up people to batter their way out of the traffic entanglement in that place. The victim could have had more than enough opportunity to foil the consummation of the holdup.

"The accused did not give a description of the holduppers or of their vehicle. No attempt was made by him to escape or seek help.

"Again, this accused stated that he became unconscious when he was dumped at Vito Cruz. This, too, is unbelievable. For the fact is that after he was treated at the Philippine General Hospital he did not stay there. Which goes to show that the wound he received was not as serious as he related.

"Another circumstance observed by the court is that the last receipt Exhibit B–16 is in the name of Marcia Trading. The accused could not say during the course of the trial that the collection from this company was made in Pasay to give some semblance of plausibility to his testimony that he came from Pasay at 4 o'clock that afternoon." (Pp. 6–7, Decision, CFI.)

With reference to the sum of ₱3,000 collected from Co Pian on March 22, 1947, represented by the original receipt Exhibit D–2, the duplicate of which is only for ₱2,350 (Exhibit D–1), and the sum of ₱1,288 collected from Chuan Lam on May 20, 1947, represented by the original receipt Exhibit C–2, the duplicate of which is only for the sum of ₱1,123.20 (Exhibit C–1), the appellant alleges that when he issued the original receipts, for lack of time he could not fill out the duplicate receipts, which he did afterward, without having before him the original receipts, relying only on his memory. This is the reason for the discrepancies in the amounts stated in the original and duplicate receipts. It is a very strange coincidence that the differences were in his favor in the two receipts. He could have ascertained the true amount by counting the money that he had collected or by inquiring from Co Pian and Chuan Lam, respectively, the amounts they had paid, or by asking them to show him the original receipts. This explanation is not worthy of consideration.

The court below deducted the sum of ₱4,100 represented by the receipt Exhibit B–1 from the sum of ₱15,594.75, for the reason that according to it the prosecution had failed to proved satisfactorily that the Vilco Trading Company had suffered any damage with regard to said item. The facts regarding this point are as follows: Co Pian on June 29, 1947, paid the sum of ₱4,100 by means of a check which the appellant turned over to the Company; however, on the following day, June 30, the appellant told Co Hee, manager of the Company, that Co Pian did not have sufficient funds in the bank to honor the check and that he wanted to return it to Co Pian in exchange for cash; Co Hee returned the check to the appellant for said purpose. The appellant has neither re-

turned the check to the Company nor delivered the cash nor given any explanation. The prosecution did not present evidence that the check was cashed by the appellant or that Co Pian gave him the cash in exchange for the check. It is a fact, however, that the Company did not receive the total amount of ₱15,594.75, which includes the sum of ₱4,100 represented by the duplicate receipt Exhibit B–1. Furthermore, the defendant, in his confession Exhibit A, admitted having misappropriated the whole amount of ₱15,594.75. It is, therefore, logical to conclude that he also misappropriated and converted to his own use the sum of ₱4,100.

The appellant testified that he was asked to sign Exhibit A, already prepared by a detective, without understanding its contents because he does not know English. In the first place, this is belied by the detective who assured the court that the contents of Exhibit A had been obtained from the defendant in Tagalog and put into English, and that before the latter signed it, it was interpreted to him in Tagalog. In the second place, it is not true that the defendant does not understand English, because as remarked by the court below, he answered some of the questions propounded in English before it was interpreted into Tagalog.

Referring to case No. 3718 (CA–G. R. No. 3484–R), the appellant is correct in his contention that there is no crime known as *estafa* through falsification of a private document, for the reason that the falsification of a private document, to be punishable, requires damage to a third person and that damage, in the present case, is the conversion to his own use of the amount collected through the use of falsified private documents. This doctrine was upheld by a unanimous court through Mr. Justice Villamor in the well considered decision in the case of People *vs.* Reyes (56 Phil., 286), from which we quote the following:

"1. CRIMINAL LAW; 'ESTAFA' THROUGH FALSIFICATION OF PRIVATE DOCUMENT.—Where the defendant is accused of *estafa* with the falsification of a private document, or falsification of a private document with prejudice to a third person, the weight of authority as examined in the opinion of the court leans to the doctrine that there are not two distinct crimes committed, *estafa* and falsification, and that article 89 of the Penal Code is not applicable. This is the doctrine followed by the Supreme Court of Spain in construing article 318 of the old Spanish Penal Code (art. 304 of ours).

* * * * * * *

"3. ID.; ID.; ID.—The defendant's falsification of the 'time book' with the intent to gain at the expense of the injured party, constitutes the crime of falsification of a private document with prejudice to a third person, defined and penalized in article 304 of the Penal Code, and the accused must suffer the corresponding penalty."

The crime, therefore, committed in case No. 3718 is that of falsification of private documents with prejudice to a third person and not *estafa* through falsification of private documents.

It will be noted that in case No. 3718 the appellant falsified the duplicate receipt Exhibit D–1 on March 22, 1947, and the duplicate receipt Exhibit C–1 on May 20, 1947, with a difference of almost two months. In the case of U. S. *vs.* Infante et al. (36 Phil., 146), the court held:

"2. ID.; ID.; EACH FALSIFICATION SEPARATE OFFENSE.—Two pawn tickets were falsified at or about the same time by the same persons in a substantially similar manner, that is to say, by the substitution in each of an article of much higher value than the article for which it was originally issued. These pawn tickets were thereafter presented and made use of together as a pledge to procure a loan far in excess of the true value of the article originally pawned. *Held*: That the falsification of each of these documents constituted a single consummated offense wholly separate and distinct from the other and wholly separate and distinct from the crime of embezzlement which was committed when illegal and improper use was made of these falsified pawn tickets as pledges; and that a plea of a former conviction of the falsification of one of these pawn tickets is not a bar to the prosecution and maintenance of a criminal action wherein the accused are charged with the falsification of the other."

In accordance with the above doctrine, two crimes of falsification were committed in this case. There having been no objection to the complaint on the ground of duplicity, the defendant should be punished for the two crimes under the same information.

Referring to case No. 3717 (CA–G. R. No. 3483–R), the Solicitor General points out that the penalty imposed by the court below is not within the range prescribed by law and should be modified accordingly, and that the amount to be indemnified should be ₱15,594.75. The appellant is, therefore, hereby sentenced to suffer from two (2) years to five (5) years, five (5) months and eleven (11) days of *prisión correccional,* and to indemnify the offended party in the sum of ₱15,594.75, with the corresponding subsidiary imprisonment in case of insolvency. As above modified, the judgment appealed from is affirmed in all other respects, with costs.

In case No. 3718 (CA–G. R. No. 3484–R), the appellant is sentenced to suffer from six (6) months of *arresto mayor* to three (3) years, six (6) months and twenty-one (21) days of *prisión correccional,* to pay a fine of ₱4,000, and to indemnify the offended party in the sum of ₱650, with the corresponding subsidiary imprisonment in case of insolvency.

In addition to the above, the appellant is sentenced to suffer from six (6) months of *arresto mayor* to three

(3) years, six (6) months and twenty-one (21) days of *prisión correccional*, to pay a fine of ₱4,000 and to indemnify the offended party in the sum of ₱164.80, with the corresponding subsidiary imprisonment in case of insolvency. As above modified, the judgment appealed from in case No. 3718 is affirmed in all other respects, with costs. It is so ordered.

Felix and *De la Rosa, JJ.*, concur.

Judgment modified.

[No. 3220–R. January 4, 1950]

CELESTINO ACENAS, petitioner and appellee, *vs.* FELITO PABELLAN et al., oppositors and appellants

1. EVIDENCE; IMMATERIAL OMISSIONS, THEIR EFFECT ON THE PROBATIVE VALUE OF THE TESTIMONY OF WITNESS.—Immaterial omissions whether committed voluntarily or otherwise may not add or detract from the probative value of the testimony of a witness.
2. ID.; AS BETWEEN AN EXTRAJUDICIAL TESTIMONY AND ONE GIVEN IN OPEN COURT, COURT MAY CHOOSE ON WHICH TO GIVE CREDIT AND WEIGHT.—As between the statement made extrajudicially, even if made under oath, and the one given in open court during a trial duly held where parties had been given ample opportunity to examine and cross-examine the witness, the court may choose and commits no error in giving more credit and weight to the testimony made before it, taking into consideration the other evidence and all the circumstances surrounding the case, including the act and demeanor of the witness who made the said contradicting statements.

APPEAL from an order of the Court of First Instance of Misamis Oriental. Belmonte, J.

The facts are stated in the opinion of the court.

Teogenes Velez for appellants.
Tirso M. Dañar for appellee.

RODAS, *J.*:

That last will and testament of the late Petronila Valmoria having been admitted to probate by the Court of First Instance of Misamis Oriental, the oppositors filed this appeal on the following assignments of error:

I

"The lower court erred in giving credit to the testimony of Sabas Dacoc.

II

"The lower court erred in finding that the will Exhibit A was duly executed.

III

"The lower court erred in allowing the will Exhibit A to probate."

The late Petronila Valmoria was first married to Roque Sombrano Tan Sioco and the couple only had a daughter named Emilia Sombrano Valmoria who was

born in 1896. In said year the husband went on vacation to China and there he died. The couple acquired several small parcels of land and a big one which was planted to abaca, but during the revolution, the abaca was outgrown by weeds due to lack of care. After the revolution she was married to Marcelino Quipanes who helped her managed her lands in which coconut trees were planted.

Petronila Valmoria died on October 10, 1939 in Kinoguitan, Misamis Oriental, of which she was a resident at the time of her death and long before. On October 4, 1947 the last will and testament above-mentioned was found together with personal property in a trunk or box belonging to the deceased by the petitioner Celestino Acenas, who prayed that he be appointed administrator of the estate of the deceased in lieu of Marcelino Quipanes who died before the discovery of the existence of said last will and testament. In due time Felito Pabellan, Remedios Fabellan and Agotona Vda. de Pabellan filed their opposition predicated on the following grounds:

"1. That Felito Pabellan and Remedios Pabellan appear as legitimate children and heirs of their deceased mother Emilia Sembrano y Valmoria who was the only daughter of the deceased Petronila Valmoria.

"2. That about two years after the supposed execution of the alleged last will of the late Petronila Valmoria, the latter executed a deed of donation of all her properties all of which were immediately accepted and delivered.

"3. That even if there was such a will which fact is not admitted, the same had been revoked and nullified by the execution of a subsequent deed of donation.

"4. That the late Petronila Valmoria did not execute any valid will."

On the trial of the case, it was established through the testimony of Roberto Valmoria, the one who signed the testatrix's name on all the pages and at the end of the will in the presence of the testatrix and each and every one of the three instrumental witnesses at the request of the attorney who made the same and after reading and explaining the contents thereof to the testatrix, and signed his own name and witnessed its execution from start to finish, and the testimony of Sabas Dagoc, one of the three instrumental witnesses, the other two Emilio Abao and Vicente Padla having already died, that the document, Exhibit A, was thumbmarked by said testatrix and held her name signed by said Noberto Valmoria on the left margin of each and every one of the five pages of which the will consists, numbered respectively in letters from one to five, and at the foot of said will in the presence of said three witnesses and Roberto Valmoria, and that the signatures appearing on the left margin of each and every one of the five pages of said Exhibit A as

well as at the end of said will and of the attestation clause which read Emilio Abao, Sabas Dagoc and Vicente Padla, are the signatures, respectively, of said three witnesses signed in the presence of each and every one of them and that of the testatrix and of said Roberto Valmoria; that the testatrix knew and spoke the Cebu-Visayan which was the dialect in which Exhibit A was written; and finally, that at the time of the execution of said document, the testatrix was in a good physical condition, having a sound mind and disposing memory.

In support of the assignments of error, parts of the testimony of said witness are quoted in the appellants' brief showing minor contradictions and errors they incurred which do not impair their credibility. It is alleged that notwithstanding the admitted fact that Marcelino Quipanes was present and witnessed the execution of said will, the said two witnesses failed altogether to mention him as among these who were present during the signing of said will, which although not at all necessary to establish the due execution thereof, however affects the credibility of said witnesses. Immaterial omissions whether committed voluntarily or otherwise may not add or detract from the probative value of the testimony of a witness.

The credibility of the witness Sabas Dagoc is sought to be under-rated because of Exhibit 1, alleged to be an affidavit subscribed and sworn to by said witness before Jose Valez Magallon, the late justice of the peace of Kinoguitan, wherein said witness stated:

> "That on a certain day in August, 1937, I was called by Marcelino Quipanes, husband of the late Petronila Valmoria and I was taken to their house upstairs, and there I was requested to sign my name on a testament, which according to him was the testament of Mama Ito and inasmuch as they considered as my parents, I signed the same; but when I signed my name only Papa Inong was my companion as Mama Ito was in the kitchen and on said testament I had not seen any signature of Mama Ito neither her thumb mark. The only signature I saw, was the signature of Emilio Abao. I signed such testament in the sala," (Exhibit 1–A),

thus contradicting his testimony made in open court on the hearing of the will. Sabas Dagoc, however, when confronted with said exhibit denied having executed the same. Taking for granted that said exhibit was actually made and executed by said witness, the court may in its discretion believe the testimony of said witness made before it and ignore altogether said exhibit. In the instant case, the witness not only disclaimed having signed said affidavit but in fact declared that the statement therein contained to the effect that only Marcelino Quipanes was present when he signed the same as a witness is not at all true; that what is true is that they were all (testatrix and witnesses) present in accordance with his

testimony made in open court. Consequently, as between the statement made extra-judicially, even if made under oath, and the one given in open court during a trial duly held where parties had been given ample opportunity to examine and cross-examine the witness, the court may choose and commits no error in giving more credit and weight to the testimony made before it, taking into consideration the other evidence and all the circumstances surrounding the case, including the act and demeanor of the witness who made the said contradicting statements.

In view of the foregoing, the court finds the decision appealed from to be in accordance with the law and the evidence of the case and hereby affirms the case, with costs.

Endencia and *Martinez, JJ.*, concur.

Judgment affirmed.

[No. 3247–R. January 5, 1950]

THE MEYER AND BROWN CORPORATION, plaintiff and appellee, *vs.* CHAN LENG, defendant and appellant [1]

1. COMMERCIAL LAW; SALE OF GOODS OF PERISHABLE NATURE; VENDEE'S REFUSAL TO ACCEPT PARTIAL DELIVERY; ALTERNATIVE REMEDIES OPEN TO VENDOR; ARTICLE 332, CODE OF COMMERCE.—There is no merit in the vendee's contention that the vendor's remedy upon vendee's refusal to accept partial delivery of goods ordered by him was not to sell all the goods, but to deposit them judicially, and thereafter to sell them with the permission of the court, if they are of a perishable nature, for article 332 of the Code of Commerce, which governs the transaction between the parties, permits the vendor to choose between two alternative remedies, i.e., by a judicial deposit of the goods, or a rescission of the contract, in the latter case with right to indemnity for losses (article 1124, Civil Code). The vendor chose the second, the rescission of the contract, hence no deposit was necessary.
2. ID.; ID.; FORCE MAJEURE; DELAY IN SHIPMENT OF GOODS CAUSED BY STRIKE, CONSIDERED FORCE MAJEURE; CASE AT BAR.—A strike is something that can not be foreseen, and as on September 7, 1946, a strike in the West Coast of the U.S. had just ended, it was not to be expected that another was in the offing. It is apparent, therefore, that delay in the shipments of the goods ordered by the vendee fell entirely within the scope of the *foree majeure* clause in the contract.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Greg. V. Pajarillo for appellant.

Gibbs, Gibbs, Chuidian & Quasha for appellee.

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[1] *See* Resolution of the Supreme Court of February 28, 1950. Appeal by certiorari was dismissed for lack of merit.

LABRADOR, *J.*:

On September 7, 1946, defendant Chan Leng placed an order with the plaintiff, the Meyer and Brown Corporation of New York, United States of America, for 1,500 cases of squids to be delivered at Manila in three months, 500 cases in September, 500 in October, and 500 in November. The order was accepted by plaintiff, and a written contract, Exhibit A, was executed by them for the purpose. No delivery could be made during the months agreed upon because a strike in the West Coast of the United States took place, commencing in the latter part of September and ending about December 1, 1946. Shipments of the order could begin only after the strike. On December 11, 1946, plaintiff offered in writing to deliver to defendant 500 cases on December 17, and the remaining 1,000 cases on subsequent dates, in order to give defendant time to accumulate funds to cover the purchase price (Exhibit 7), but defendant refused the offer. In view of defendant's refusal plaintiff notified defendant that if he would refuse to accept delivery, the goods will be sold and that it will require the defendant to pay the difference between the price at which they were sold and the price agreed upon, which was $7 per case. In accordance with this warning, the plaintiff sold the goods when they arrived in Manila in December and January, as plaintiff had no warehouse to store them in, and realized therefrom the total sum of ₱20,675. The goods, if accepted by defendant as per agreement, would have cost the latter and would have netted plaintiff a total of ₱21,703.97, including exchange, banking, and arrastre and landing charges. Hence, plaintiff suffered losses amounting to ₱1,028.97, and it had to pay, in addition, the sum of ₱1,645.50 for sales taxes, agent's commission, and delivery charges. So plaintiff brought this action to recover a total of ₱2,674.47, which is the sum total of the losses in the sales and the expenses incurred therein. Judgment having been rendered for the total amount demanded, defendant has presented this appeal.

It is first contended on defendant-appellant's behalf that plaintiff's remedy upon defendant's refusal to accept delivery of the first 500 cases was not to sell all the goods, but to deposit them judicially, and thereafter to sell them, with the permission of the court, if they are of a perishable nature. We find no merit in this contention, for article 332 of the Code of Commerce, which governs the transaction between the parties, permits the vendor to choose between two alternative remedies, i. e., by a judicial deposit of the goods, or a rescission of the contract, in the latter case with right to indemnity for losses (article 1124, Civil Code). Plaintiff-vendor chose the

second, the rescission of the contract, hence no deposit was necessary.

It is also claimed in defense that the sale of the goods by plaintiff was too hasty and abrupt, and that were it not for this haste, the goods would have been sold at higher prices. Plaintiff explained that the goods had to be sold because it had no warehouse in which to deposit them. Besides, delivery was to be made at the docks, not at plaintiff's warehouse, and the deposit of the goods was never within the contemplation of the parties should refusal to accept delivery take place. We find this explanation very satisfactory, as warehouse space was very limited in the first years after liberation. Gambling on a chance for increased prices is never countenanced by courts, and for plaintiff to have delayed disposal in anticipation thereof would have been an act of speculation which would be difficult to justify. The defense is, therefore, without merit.

It is also argued, to excuse defendant's default, that as the contract provided for periodic delivery, defendant could not be compelled to accept delivery of the total amount of the order at once. But the contract called for deliveries in September, October, and November, and the goods arrived only in December. Defendant was, therefore, bound to take all in December as the period for the delivery had already lapsed when the offer to deliver only 500 cases was refused. His refusal to take delivery even of the first 500, without notice that he was ready to receive the other later deliveries, is a rejection of all. It is to be noted, however, that opportunity was given defendant on December 11 to pay for 500 cases only, leaving delivery and payment of the balance at a later date, but even this opportunity was turned down by him. The argument fails as an excuse for defendant to live up to his contract.

It is next contended that plaintiff should have made the shipments immediately after the order was taken on September 7, 1946, and before the second strike came at the end of said month, and that failure on its part to do so prevents it from taking advantage of the *force majeure* clause inserted in the contract. The plaintiff, in answer, states that some time must be allowed plaintiff to place the order in New York and have the same shipped. We find this refutation meritorious. A strike is something that can not be foreseen, and as on September 7, 1946, a strike had just ended, it was not to be expected that another was in the offing. It is apparent, therefore, that delay in the shipments fell entirely within the scope of the *force majeure clause in the contract.*

The other points raised on this appeal refer to the measure of damages. It is argued that the sales tax and de-

livery charges should not be charged against appellant because the latter did not make the purchase. In answer, it may be stated that they form a part of the damages that plaintiff suffered in effecting the sale of the goods ordered by defendant and which he refused to receive. It is also argued that the damages should be assessed only on the first shipment, and not on the other two. The argument is without merit. The contract called for the delivery of 1,500 cases, all of which were shipped from New York as defendant's order. There is no reason, therefore, for limiting liability to the first shipment, as refusal to accept delivery was not limited to the first 500 cases alone, but to the whole 1,500 cases.

We, therefore, find all the points raised on this appeal correctly resolved by the trial court in its judgment, and we hold that the appeal is without merit. The judgment appealed from is, therefore, affirmed *in toto*, with costs against the appellant. So ordered.

Paredes and *Natividad, JJ.*, concur.

Judgment affirmed.

[No. 2008-R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA, and FELIPE DE LA CRUZ Y HOMBRE, defendants. MANUEL CAJA and FELIPE DE LA CRUZ Y HOMBRE, appellants.

[No. 2009-R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA and FRANCISCO SANCHES Y BALA, defendants. FRANCISCO SANCHEZ Y BALA, appellant.

[No. 2010-R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and TEODULO LOAY Y AMBRONA, defendants. MANUEL CAJA Y TUALA and TEODULO LOAY Y AMBRONA, appellants.

[No. 2011-R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA, and PEDRO FLORES Y FLORES, defendants. MANUEL CAJA and PEDRO FLORES Y FLORES, appellants.

[No. 2012-R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA, and JACINTO DE LA CRUZ, defendants. MANUEL CAJA, appellant.

[No. 2013–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and BONIFACIO AYONG Y DASMARIÑAS, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2014–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and FELIX CABER Y LENTIJAS, defendants, MANUEL CAJA Y TUALA, appellant.

[No. 2015–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and NICOLAS ANIDO Y ESPINA, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2016–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and ANDRES DEL ROSARIO Y ACANG, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2017–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and ANTONIO GALVEZ Y MACHETE, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2018–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and FORTUNATO ANIDO Y ESPINA, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2019–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and RAMON LIGAYADA Y CASTRO, defendants. MANUEL CAJA Y TUALA and RAMON LIGAYADA Y CASTRO, appellants.

[No. 2020–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and ENGRACIO BOYSER Y ABRAO, defendants. MANUEL CAJA Y TUALA, appellant.

[No. 2023–R. January 6, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELQUIADES CABER Y SACADA, MANUEL CAJA Y TUALA and PETRONILO MANGOSERA, Y MARSADO, defendants. MANUEL CAJA Y TUALA, appellant.

1. CRIMINAL LAW; ATTEMPTED ESTAFA THROUGH FALSIFICATION OF PUBLIC AND OFFICIAL DOCUMENTS; CRIME MAY BE COMMITTED BY PRIVATE PERSON.—The contention of one of the appellants that the complex crime of attempted *estafa* through falsification of public and official documents cannot be committed by a private person is untenable, and the case of People *vs.* Camacho, 44 Phil., 484, cited in his brief is not in point and has no bearing on the case under consideration.
2. CRIMINAL LAW AND PROCEDURE; ARRAIGNMENT AND PLEA; FAILURE TO ENTER PLEA OF ACCUSED; EFFECT.—Rule 114, section 1 of the Rules of Court, provides that the mere failure to enter of record the plea of the accused will not vitiate the validity of the proceedings in the cause.
3. ID.; MOTION TO QUASH, WHEN DEEMED ABANDONED.—A motion to quash is deemed abandoned when the accused enters trial without raising the question or requesting the trial court to act upon his motion first.
4. CRIMINAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE, ADMISSIBILITY OF; COURT'S DISCRETION.—Documentary evidence offered by the Fiscal *immediately after* he had rested the case for the government, and *before* the defense submitted its evidence is admissible at the discretion of the court.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Remedios P. Nufable for appellant De la Cruz.
Augusto Revilla for appellant Caja.
Manuel Y. Mecias for appellant Ligayada.
Raymundo Daza for appellant Loay.
Juan R. Solijon for appellant Sanchez.
First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Ramon Avanceña* for appellee.

FELIX, *J.:*

As a result of the appropriation of funds and the authority granted by Executive Order No. 83, dated December 24, 1945 (42 Off. Gaz. No. 1, page 9—January, 1946), the Bureau of Public Works had been paying gratuities to laborers working for that Bureau for about one year prior and up to December 8, 1941, when the war in the Pacific broke out. The procedure followed in the payment of such gratuities was simply to make the laborer concerned to submit the corresponding application for payment supported by his affidavit and residence certificate. Upon approval of the application, a general voucher (Form No. 5–A) was prepared for the signature of Pio Camus, acting special agent, and Isaias Fernando, Director of of Public Works, and after the signatures of these officers were affixed to the voucher, the laborer submitting the application was paid the amount claimed to be due him as gratuity.

Somehow, Melquiades Caber y Sacada got information about these payments, and in his desire to loot the public

coffers, devised a scheme to attain his purpose. To that end on May 22, 1946, he ordered the PSP Press at 918 Lepanto, Manila, to print 1,000 copies of the mimeographed application and supplementary affidavit forms used by the employees who were in the service of the Bureau of Public Works at the outbreak of the last war, in collecting their months' gratuities. A few days thereafter, Melquiades took delivery of the printed forms and went looking for persons who could help him carry out his plan of using fictitious laborers to cash in from the funds allotted for the payment of two months' gratuity for each of them. To start with, Melquiades hired Teodora Away as a clerk and utility employee and then contacted Manuel Caja y Tuala, Arsenio Gatmen y Hermonilla, Engracio Boyser y Abrao, Bonifacio Ayong y Dasmariñas, Francisco Sanchez y Bala, Ramón Manuel and Floro Perante. All these men, except the last two, were willing to participate and conspired to cooperate in said felonious enterprise.

Floro Perante, Melquiades' province mate, and Ramon Manuel, clothes peddler in the premises of the Bureau of Public Works, upon learning of the unlawful nature of the undertaking, made up their mind to inform, as they did inform, the police about it, and acting in accordance with the instructions they received to watch Melquiades and his men, they feigned interest in their concern in order to enjoy their confidence and be posted on their movements and activities. They thus came to be so closely associated with Melquiades, that the latter told Perante that he had a friend who furnished him the necessary vouchers to which should be attached the forms he had ordered printed, and who knew how to go about the collection of said vouchers.

In furtherance of their conspiracy and scheme, Manuel Caja requested Medad Velarde, an employee of the City of Manila, to issue approximately 200 residence certificates to fictitious persons appearing in the list which he submitted, and convinced by Manuel Caja, she yielded to his request and issued the required residence certificate which were all signed and thumb-marked by Manuel Caja himself. Also, in some unexplained way, Melquiades obtained numerous blank forms of the vouchers used in connection with the payment of two months' gratuity, many of them with the alleged signatures of said Pio Camus and Isaias Fernando, and with the necessary papers in his possession, Melquiades and his co-conspirators looked for men who were willing to present the gratuity papers to the Bureau of Public Works and cash them.

The scheme went on boomingly and without serious contretemps until November 7, 1946, when the police authorities, acting on the reports of Manuel and Perante, and after shadowing the men involved in the racket aforemen-

tioned repaired to the house of Melquiades Caber at No. 262 M. Earnshaw, Sampaloc, Manila, where, provided with the necessary warrant, they proceeded to make a search in the premises. At that time Melquiades was not in, but the detectives found in Melquiades' trunk two bundles of vouchers with the corresponding applications, residence certificates, and supplementary affidavits. Melquiades Caber arrived a little later, and another bundle of similar papers was found on his person. Detective Policarpio R. Flores asked him then to explain his possession of so many vouchers, but he said that they had been left with him by some friends, though he could not state who these friends were, or give their names.

On that same day, November 7, 1946, another group of detectives raided the premises of the Bureau of Public Works at Ramón Papa Street, Sampaloc, Manila, where about fifty-five persons were arrested, among them being Petronilo Mangosera y Marsado, Ramon Ligayada y Castro, Jacinto de la Cruz y Ongue, Felipe de la Cruz y Ongue, Engracio Boyser y Abrao, Antonio Galvez y Machete and Félix Caber y Lentija, Melquiades Caber's father, who were prosecuted in due time, while the rest were released for lack of sufficient evidence against them.

From the Bureau of Public Works, the detectives proceeded to a restaurant on Gastambide Street, where they arrested Nicolas Anido y Espina, Pedro Flores y Flores, Teodulo Loay y Ambrona, Fortunato Anido y Espina, Arsenio Gatmen y Hermonilla, Francisco Sanchez y Bala, and Bonifacio Ayong y Dasmariñas. In the possession of all these persons were also found papers that connected them with the racket engineered by Melquiades Caber.

After the matter was reported to the Fiscal for the City of Manila, a preliminary investigation was made which led to the filing in the Court of First Instance of Manila of a series of cases against the persons whose names appear at the caption of this decision. It will be observed, however, that in those cases in which the culprits succeeded in collecting two months' gratuity for fictitious laborers of the Bureau of Public Works, no prosecution was undertaken, as the charges filed in all the fifteen cases brought to court were only for the complex crimes of attempted *estafa* through falsification of public and official documents. By looking into the records of the Bureau of Public Works we think that it would have been possible to ascertain if any of the 200 residence certificates irregularly issued by Medad Velarde was availed of with success by anyone representing to be a laborer of said Bureau.

Of the 17 persons accused Melquiades Caber y Sacada was included in all the 15 cases filed; Manuel Caja y Tuala in 13 cases, and the rest of the defendants, to wit:

1. Felipe de la Cruz y Ongue;
2. Francisco Sanchez y Bala;
3. Teodulo Loay y Ambrona;
4. Pedro Flores y Flores;
5. Jacinto dc la Cruz y Ongue;
6. Bonifacio Ayong y Dasmariñas;
7. Felix Caber y Lentijas;
8. Nicolas Anido y Espina;
9. Andres dcl Rosario y Acang;
10. Antonio Galvez y Machete;
11. Fortunato Anido y Espina;
12. Ramón Ligayada y Castro;
13. Arsenio Gatmen y Hermonilla;
14. Engracio Boyser y Abrao; and
15. Petronilo Mangosera y Marsado,

were prosecuted each in one case.

After proper proceedings and joint hearing the court rendered judgment as follows:

"Whereforc, the court finds each and everyone of the herein accused guilty of the crime of attempted estafa through falsification of public and official documents as charged in each and every one of the informations filed in the respective cases, and hereby *sentences Melquiades Cabcr and Manuel Caja each to suffer four (4) months of arresto mayor in each and every one of the abovc cntitled 15 cases* (in which they are accused), provided that the duration of their sentence shall not be more than threcfold the length of time corresponding to each sentence; each to pay a fine of ₱250 in each case, with the corresponding subsidiary imprisonment in case of insolvency and to pay ⅓ of the costs. *The court also hereby sentences cach and every one of the accused in all of said 15 cases to suffer four (4) months of arrcsto mayor; to pay a finc of ₱100 with the corrcsponding subsidiary imprisonment in case of insolvency, and to pay ⅓ of the costs in each of their individual cases.*

"The dismissal of the casc against del Rosario (FI–Cr. Cases No. 1625) ordered on motion of Fiscal based on lack of evidence is hereby reiterated, with costs *dc oficio* as far as said accused is concerned.

"The accused Jacinto de la Cruz and Antonio Galvez in criminal cases Nos. 1606 and 1626, respectively, are hereby acquitted on the ground of reasonable doubt and their release from custody or the cancellation of the bond, if any, posted for their temporary release, ordered, with the proportional part of the costs *de oficio*.

"Criminal Case No. 1676, as far as the accused Engracio Boyser is concerned, shall remain pending until said accused is arrested and trial completed."

It shall be noticed that Francisco Sanchez, Arsenio Gatmen and Bonifacio Ayong participated in the conspiracy and cooperated with Melquiades Caber and Manuel Caja in the commission of the offenses described in the informations filed in the 15 cases, and, consequently, they should have been accused with the two main defendants, in each and every one of said cases; but inasmuch as they have not been thus charged, the lower court could only find them guilty in the individual cases in which they were prosecuted and had to sentence them accordingly.

Neither Medad Velarde, who prepared and supplied the residence certificates used for carrying out the plan of defrauding the government, nor Teodoro Away, employed by Melquiades Caber to arrange and sort out the residence certificates and some blank papers concerning the collection of the two months' gratuity to laborers of the Bureau of Public Works, was included in any of the informations filed, undoubtedly because they were called as witnesses for the prosecution.

The evidence shows that the signatures of Pio Camus acting special agent of the Bureau of Public Works appearing on some of the copies of the general vouchers (Form No. 5–A) seized from the defendants, were the genuine signatures of said agent, and that the signatures of Isaias Fernando, Director of the Bureau of Public Works, appearing thereon were spurious and falsified. The record, however, does not disclose how said general vouchers, specially those signed by Pio Camus, came into the possession of Melquiades Caber and why Camus had signed some of them.

From the decision rendered in the 14 cases indicated in the caption of this decision (which does not include criminal case No. 1642, wherein the accused were Melquiades Caber y Sacada and Arsenio Gatmen y Hermonilla), only Manuel Caja, Felipe de la Cruz, Pedro Flores, Teodulo Loay, Ramón Ligayada and Francisco Sanchez appealed. The counsel for Manuel Caja submits that the lower court erred: (1) in failing to observe the requisite steps of a valid arraignment and plea, and in not finding that "more than one offense is charged" in the information; (2) admitting the documentary exhibits, particularly Exhibits D and D–1 after the prosecution had rested its case; (3) in convicting the accused of attempted *estafa* through falsification of public and official documents upon the evidence of record for the prosecution; and (4) in imposing a dual penalty for the same offense, and in not acquitting the appellant on the ground of reasonable doubt.

The other appellants, through their respective counsel, attributed to the lower court the commission of errors relative to the admissibility, sufficiency and appreciation of the evidence. Appellant Francisco Sanchez further submits that the trial court erred in convicting him and in sustaining that the complex crime of attempted *estafa* through falsification of public and official documents could be committed by a private person.

Upon reviewing the evidence on record, we find that appellants Manuel Caja and Francisco Sanchez have conspired and confederated with Melquiades Caber, Arsenio Gatmen, Bonifacio Ayong and Engracio Boyser to com-

mit the crimes with which they stand charged, for the consummation of which they all participated and helped one another. So that no doubt can be entertained as to the guilt and criminal liability of these two appellants who voluntarily admitted their complicity in the scheme of Melquiades Caber (Exhibits G and I).

In the possession of the other appellants named hereafter, the detectives found the following papers:

"(*a*) *Felipe de la Cruz*—General Voucher No. 5(A), Exhibit D–1, covering two months' gratuity in the amount of ₱62.50 in favor of Nicanor Andaya purporting to have been signed by the latter; application for payment of gratuity, Exhibit C–31, purporting to have been signed and sworn to by Nicanor Andaya to the effect that he worked as temporary laborer in the Bureau of Public Works from February 15 to December 15, 1941, with compensation at the rate of ₱1.25 a day; supplementary affidavit, Exhibit C–32, for payment of two months' bonus, purporting to have been signed by Nicanor Andaya to the same effect as application Exhibit C–31; residence certificate No. A–1676696, Exhibit D, issued on May 3, 1946, in the name of Nicanor Andaya.

"(*b*) *Pedro Flores*—General Voucher No. 5(A), Exhibit E–6, covering claim for two months' gratuity in the amount of ₱62.50 purporting to have been signed and thumb-marked by Engracio Nerra; application for payment of gratuity, Exhibit C–29, purporting to have been signed, thumb-marked and sworn to by Engracio Nerra to the effect that he worked as a temporary laborer in the Bureau of Public Works from February 15 to December 15, 1941, with compensation at the rate of ₱1.25 a day; supplementary affidavit, Exhibit C–30, purporting to have been signed and thumb-marked by Engracio Nerra to the same effect as application Exhibit C–29; and residence certificate No. A–1676769 issued in the name of Engracio Nerra, Exhibit D–2.

"(*c*) *Teodulo Loay*—General Voucher No. 5(A), Exhibit E–7, covering two months' gratuity in the sum of ₱62.50 purporting to have been signed by Telesforo Castillote; application for payment of gratuity, Exhibit C–27, purporting to have been signed and sworn to by Telesforo Castillote to the effect that he worked as a temporary laborer in the Bureau of Public Works from February 15 to December 15, 1941, with compensation at the rate of ₱1.25 a day; supplementary affidavit, Exhibit C–28, purporting to have been signed by Telesforo Castillote to the same effect as application Exhibit C–27; and Exhibit B–19, residence certificate No. A–1676694 in the name of Telesforo Castillote.

"(*d*) *Ramón Ligayada*—General Voucher No. 5(A), Exhibit E–5, covering claim for two months' gratuity in the amount of ₱62.50 purporting to have been signed and thumb-marked by Catalino Escas; application for payment of gratuity, Exhibit C–B, purporting to have been signed, thumb-marked and sworn to by Catalino Escas to the effect that he worked as a temporary laborer in the Bureau of Public Works from February 15 to December 15, 1941, with compensation at the rate of ₱1.25 a day; supplementary affidavit, Exhibit C–7, purporting to have been signed and thumb-marked by Catalino Escas to the same effect as application Exhibit C–8; and Exhibit D–16, residence certificate in the name of Catalino Escas, No. A–1676777."

Appellants Felipe de la Cruz, Pedro Flores, Teodulo Loay and Ramon Ligayada were convicted in the re-

spective cases in which they were accused not only or merely by reason of their possession of the respective papers seized from them by the police, but because the possession of such papers, which were intimately connected with the collection of gratuities payable to former laborers of the Bureau of Public Works, clearly established that they had conspired with Melquiades Caber and his men for the perpetration of the offenses they were charged with, and, naturally, they also were and had to be held liable as principals for said offenses and sentenced accordingly.

The contention of appellant Sanchez that the complex crime of attempted *estafa* through falsification of public and official documents cannot be committed by a private person is obviously untenable, and the case of People *vs.* Camacho, 44 Phil., 484, cited in his brief is not in point and has no bearing on the case under consideration.

Counsel for appellant Manuel Caja contends that the record does not show specifically that he had pleaded to the information, or that his motion to quash of December 13, 1946, on the ground of duplicity of charges in the information, has been acted upon by the court below, and, consequently, that the court erred in failing to observe the requisite steps of a valid arraignment and plea, and in not finding that "more than one offense is charged" in the information. As pointed out by the Solicitor General, it should be observed that appellant made no showing whatever that the court actually committed irregularities in its actuations on these aspects of the case, and it is a well established rule that in the absence of any showing that appellant has not pleaded, the presumption of regularity in the actuations of the trial court should be upheld. Thus, Rule 114, section 1 of the Rules of Court, provides that the mere failure to enter of record the plea of the accused will not vitiate the validity of the proceeding in the cause.

With regard to Caja's motion to quash, suffice it to say that he is deemed to have abandoned the same as he entered trial without raising the question or requesting the trial court to act upon his motion first.

> "A defendant may waive or abandon his demurrer not only by expressly withdrawing it, but also by conduct inconsistent with the intention to rely upon it, as by proceeding to final hearing on the merits without a disposition of the demurrer." (21 C.J., 415.)

Anent the protest of appellant Caja against the admission of documentary evidence, specially of Exhibits D and D–1, the latter being the voucher in the name of Nicanor Andaya involved in case No. 2008–R, alleging that the same were admitted *after* the prosecution had rested its case, the record shows that *immediately* after

the Fiscal made the statement that he rested the cases for the Government, he offered in evidence various exhibits, among them Exhibits D and D–1, which were accepted and received by the court, and considering that the presentation and admission of such exhibits were made *right after* said statement of the Fiscal and *before* the defense submitted its evidence, we hold that the ruling of the lower court concerning said exhibits was within its discretion. Appellant Caja has not shown that he was unduly prejudiced by said ruling, or that the trial judge abused his discretion in this respect.

Finally, with regard to the contention of counsel for Manuel Caja that the lower court erred in imposing a dual penalty for the same offense, we may admit that such contention is *technically* correct, though we attribute it to an oversight or *clerical omission* and without any intention on the part of the trial judge to impose on Manuel Caja and Melquiades Caber two penalties for each of the crimes they were convicted of. The error was due to the omission of the word "OTHER" from the portion of the judgment referring to the defendants convicted other than Manuel Caja and Melquiades Caber. As it was the evident intention of the trial judge to write, we shall insert in the objected part of the judgment the word "OTHER" (as we do in capital letters), so that said part shall read thus:

"The court *also* hereby sentences *each and every one* of the OTHER accused in all of said 15 cases to suffer four months of *arresto mayor;* to pay a fine of ₱100 with the corresponding subsidiary imprisonment in case of insolvency, and to pay ¼ of the costs *in each of their individual cases.*"

The wording of the first paragraph of the dispositive part clearly indicates the purpose of the lower court to sentence the accused Melquiades Caber and Manuel Caja in each of the cases in which they were accused to the penalty mentioned therein, and *also* to impose the same penalty on the other accused in the particular cases in which they had been prosecuted.

The lower court, however, committed a mistake in fixing the penalty it imposed on each of the defendants. The offense charged in each of the cases appealed from is attempted *estafa* through falsification of public and official documents. Article 172 of the Revised Penal Code prescribes a penalty of *prisión correccional* in its medium and maximum periods and a fine of not more than ₱5,000 for any private individual who shall commit any falsification in any public or official document or letter of exchange or any other kind of commercial document. The crime of *estafa* in the amount of ₱62.50 is punished in article 315 No. 4 of the same code with *arresto mayor*

in its medium and maximum periods but the *estafas* in the cases at bar having been merely *attempted* that penalty should be lowered by two degrees (article 51, RPC) or to *destierro* (banishment) in its minimum and medium periods. As the offense charged in each of the informations is the complex crime of attempted *estafa* through falsification of public and official documents (by private individuals), according to article 48 of the Revised Penal Code, as amended by Act No. 4000, the penalty to be imposed to each of the defendants should be the maximum period of the penalty set for the most serious crime (the falsification of public and official documents), that is, the maximum of *prisión correccional* in its medium and maximum periods, or from four (4) years, nine (9) months and eleven (11) days to six (6) years. There being no attending circumstances, the penalty attached by law to each of said complex crimes is from five (5) years, two (2) months and eight (8) days to five (5) years, seven (7) months and four (4) days of *prisión correccional.* Applying the provisions of the Indeterminate Sentence Law, as amended, the *imprisonment* penalty that should have been imposed on each of the appellants must be the following:

For appellant Manuel Caja y Bala—from four (4) months and one (1) day of *arresto mayor* to five (5) years, two (2) months and eight (8) days of *prisión correccional* for *each* of the crimes he was prosecuted in cases Nos. CA-G.R. 2008-R, 2010-R, 2011-R, 2012-R, 2013-R, 2014-R, 2015-R, 2016-R, 2017-R, 2018-R, 2019-R, 2020-R, and 2023-R, provided that the duration of his sentence shall not be more than three-fold the length of time corresponding to each sentence.

An equal *imprisonment* penalty of from four (4) months and one (1) day of *arresto mayor* to five (5) years, two (2) months and eight (8) days of *prisión correccional* for appellants:

Felipe de la Cruz (CA-G.R. No. 2008-R)
Pedro Flores (CA-G.R. No. 2011-R)
Teodulo Loay (CA-G.R. No. 2010-R)
Ramon Ligayaga (CA-G.R. No. 2019-R) and
Francisco Sanchez (CA-G.R. No. 2009-R)

Wherefore, and with this modification as to the *imprisonment penalties,* the decision of the lower court in each of the 14 cases mentioned in the caption, is hereby affirmed in all other respects, with the corresponding share of the costs taxed against appellants. It is so ordered.

Jugo, Pres. J., and *De la Rosa, J.,* concur.

Judgment modified.

[No. 2751-R. January 6, 1950]

JOSE SANCHEZ, plaintiff and appellee, *vs.* BIÑAN TRANSPORTATION COMPANY, INC., defendant and appellant

EMPLOYER AND EMPLOYEE; "SALARY" DEFINED.—" 'Salary' is a reward or recompense for services performed," (People *vs.* Adams, 65 Ill. App. 283) or is "a recompense or consideration made to a person for his pains and industry in another man's business" (Buxton *vs.* Rutherford County Commissioners, 82 N.C. 91, 95). (See also Enciclopedia Juridica Española Vols. 27, pp. 749–750 and 29, pp. 217–218.) Therefore, although plaintiff's compensation for his services was fixed at the rate of ₱5 per round trip he belongs to the category of salaried employees, to whom article 302 of the Code of Commerce is applicable.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Nabong & Sese for appellant.
Vicente G. Carag for appellee.

CONCEPCION, *J.:*

The defendant, Biñan Transportation Co., Inc., a corporation duly organized under our laws, is, and for many years has been, a public utility operator in the Philippines. Plaintiff Jose Sanchez was, when the second world war broke out in the Pacific, and for a number of years prior thereto had been, rendering services to the defendant as driver of its passenger trucks. When the defendant resumed operation of its business after the liberation of the Philippines, plaintiff was accordingly recalled to the service, in which he continued up to and including July 24, 1947. When plaintiff came the next day, defendant's representative told him to be on vacation. Defendant reported sometime later with the same result. Accordingly, he went to the local public defender who took the matter up with defendant's representative, but without any satisfactory result. Hence, the present action was commenced in the Justice of the Peace Court of Biñan, Laguna, for the purpose of compelling the defendant to pay the compensation for one month plus damages, upon the ground that it had dismissed the plaintiff from the service without justifiable cause. The case having been dismissed by the justice of the peace court, plaintiff appealed to the Court of First Instance of Laguna, which rendered a decision the dispositive part of which is as follows:

"In view of the foregoing considerations, the Court renders decision ordering the defendant corporation to pay the plaintiff the amount of ₱350 plus the legal interest of 6 per cent from the time of the

filing of this action until the full amount is completely paid and for defendant corporation to pay the costs."

The defendant appealed from this decision and its counsel now alleges that:

"1. The trial court erred in holding that the contract for piece-meal service of defendant with the plaintiff is not valid.

"2. The trial court erred in holding that the plaintiff was dismissed by the defendant without sufficient cause and without 30-day notice, and that said plaintiff was not able to find another job within said period of 30 days.

"3. The trial court erred in holding that the plaintiff is entitled to a salary of 30 days after leaving the employ of the defendant.

"4. The trial court erred in not dismissing the complaint."

The first assignment of error is predicated upon a false premise, for nowhere in the decision appealed from has it been held "that the contract for piece-meal service of defendant with the plaintiff is not valid."

The second assignment of error is based upon the theory that plaintiff does not fall within the purview of article 302 of the Code of Commerce, upon which the decision appealed from relies and that the defendant had not dismissed the plaintiff, but the latter "left of his own volition."

It was duly established, however, that plaintiff had not resigned, for defendant's own manager admitted that plaintiff had never said that he was quitting his job. Indeed, the services of the public defender enlisted by the plaintiff and the answer given by defendant's representative to said officer, when the latter interviewed him, to the effect "that the plaintiff deserves nothing better than (that) his head should be wrecked," apart from the institution of this case, show beyond doubt that plaintiff had not intended to resign and that the defendant was unwilling to take him back. What is more, there is reason to believe that plaintiff's efforts to organize defendant's employees into a labor union had something to do with the decision of the defendant to dismiss him from the service, for those efforts were mentioned by the representative of the defendant in the course of the conference which the public defender had had with him.

Referring now to article 302 of the Code of Commerce, the same provides:

"In cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance.

"The factor or shop clerk shall have a right, in this case, to the salary corresponding to said month."

Defendant contends that this article applies only to salaried employees, to which class, it evidently believes, plaintiff does not belong because the compensation for his

services was fixed at the rate of ₱5 per round trip. We do not agree with this view.

Although their contract of services was not for a fixed time, it is obvious from the record that plaintiff was a permanent employee of the defendant and that, as such, the former was expected and bound to report for duty every day, except when otherwise advised by the management, in line with the practice, followed and, seemingly, accepted by all concerned, of rotating the drivers who would render services, as a consequence of which plaintiff generally worked four days a week. The sum of ₱5 paid to the plaintiff for each round trip made by him with defendant's passenger trucks was merely a means of fixing the salary or compensation for his services. Thus, for instance, in People *vs.* Adams (65 Ill. App. 283), it was held: " 'Salary' is a reward or recompense for services performed."

In Buxton *vs.* Rutherford County Commissioners (82 N. C. 91, 95), the court adopted the definition given in Tomlinson's Law Dictionary to the effect that "salary" is "a recompense or consideration made to a person for his pains and industry in another man's business."

The following is quoted from the Enciclopedia Juridica Española (Vol. 27, pp. 749–750):

"La palabra 'salario' puede emplearse en un sentido amplio, estricto y usual.

(*a*) En su aceptación más lata es: 'la remuneración que recibe una persona por su trabajo'. Esta definición no es exacta, pues el salario no es la única remuneración del trabajo. No es salario, por ejemplo, el producto que obtiene con su trabajo el agricultor autónomo; no lo es tampoco los honorarios del abogado o del medico, el sueldo de los funcionarios públicos y otras muchas categorias de ingresos que, aunque proceden del trabajo, dejan de estar cualificadas por los elementos que caracterizan el verdadero salario. El defecto de esta definición radica en su gran amplitud, ya que, con la formula expuesta, quedan incluídos en la categoria de asalariados incluso los propietarios y rentistas, pues, como decia Mirabeau, 'todos los hombres, excepto los ladrones y los mendigos, son asalariados', pues todos obtienen las riquezas con que viven a cambio de sus servicios o de su trabajo.

(*b*) En una acepción más restringida se llama salario: 'la remuneración del trabajo prestado por cuenta ajena'; o en otros treminos: 'el precio del trabajo arrendado y empleado por un empresario que se llama patrono.' El salario es, pues, el precio del arrendamiento de servicios de que habla el Código Civil. *Esta definición comprende a todos los que trabajan por cuenta y a las órdenes de un patrono* (en la agricultura, la industria, el comercio, los transportes, etc.), ya sean o no trabajadores manuales. De modo que son asalariados lo mismo el proletario que el ingeniero o el abogado, a condición de que sus servicios esten arrendados a un patrono o a una empresa y no lo son los trabajadores autonomos, por modesto que sean (agricultores, artesanos, mercaderes, etc.) y los que trabajan por su propia cuenta en las profesiones liberales: unos y otros sirven al público, al cliente, pero no a un patrono.

(c) En su sentido usual, con la palabra salario se designa no toda remuneración del trabajo, ni siquiera el que se realiza por cuenta ajena, sino solamente la del trabajo manual arrendado a un patrono, y en tal concepto puede definirse: 'remuneración que el patrono, entrega al obrero por su trabajo manual.'" (Italics supplied.)

In volume 29 of the same work (pp. 217–218), the Spanish word "sueldo" is defined as "estupendio" o paga de los empleados o sirvientes."

It is apparent, from the foregoing, that the compensation paid by the defendant to the plaintiff falls within the meaning of the words "salary", "salario" or "sueldo". Indeed, any other view would enable employers, by adopting a schedule of compensation computed by the hour, day or week of service, to circumvent and defeat the spirit and purpose of article 302 of the Code of Commerce, pursuant to which—in the language of the Supreme Court—"when the one-month notice is given, only a factor or shop clerk is entitled to a month's salary. But when the one-month notice is not given, not only the factor or shop clerk but *any employee discharged without cause is entitled to indemnity which may be a month's salary*" (Jose Lopez *vs.* Alejandro Roces et al., G. R. No. 47950, decided July 1, 1942, 1 Off. Gaz., [occupation] 672). (Italics supplied.)

Contrary to defendant's pretense, plaintiff's testimony to the effect that he had been unable to find work within thirty days from July 24, 1947, has not been successfully contradicted. Although defendant's manager asserted that he had seen the plaintiff drive a jeep on or about July 25, 1947, this evidence, even if credible, does not prove that plaintiff had gotten or could have gotten another job within the period stated. Needless to say, such evidence for the defense cannot be given its face value, considering that it concerns an event which was not mentioned—although, if true, it would have, surely, been mentioned—either to the public defender, on the occasion adverted to above, or to plaintiff herein, when he reported for duty on July 25, 1947 and on a later date, in which two occasions he was, instead, told to be on vacation.

Under the third assignment of error, defendant-appellant discusses the amount of compensation collectible by the plaintiff. It appearing that he was paid ₱5 per round trip; that he made from two to three round trips a day; and that he used to work four days a week, we believe that plaintiff's average weekly compensation amounted to ₱50 a week or about ₱220 a month, to which the sum of ₱350 awarded in the decision appealed from should be reduced.

The last assignment of error is merely a consequence of the preceding ones and, therefore, needs no further discussion.

With the modification pointed out above, said decision is hereby affirmed in all other respects, with costs against the defendant-appellant. It is so ordered.

Dizon and *De Leon, JJ.*, concur.

Judgment modified.

[No. 1361-R. January 9, 1950]

ANDRES FIEL, ARCADIO FIEL and TEOFILO FIEL, plaintiffs and appellants, *vs.* PATRICIO WAGAS ET ALS., defendants and appellees.[1]

HUSBAND AND WIFE; CONJUGAL PROPERTY; HOMESTEAD; DETERMINING FACTOR WHETHER HOMESTEAD IS CONJUGAL OR NOT.—The decisive factor in order to determine whether a land acquired by homestead is conjugal property or belongs to one only of the spouses, is not the date of issuance of the homestead patent, but the time of fulfillment of the requirements of the Public Land Law for the acquisition of a right to such patent. (Brewer *vs.* Hill [1934] 152 So., 75, 178 La., 533, certiorari denied. 54 S. Ct. 631, 292 U. S. 626, 78 L. Fd. 1481.) (43 U.S.C.A., 1946 Cumulative Annual Pocket Part, p. 24.) (Smith et al. *vs.* Anacoco Lumber Co. Inc. et al., 157 La., 466; 102 So. 574; Ahern *vs.* Ahern et al., 31 Wash., 334, 71 P. 1023; Balboa *vs.* Farrales 51 Phil., 498.)

APPEAL from a judgment of the Court of First Instance of Leyte. Diez, J.

The facts are stated in the opinion of the court.

Cleto P. Evangelista for appellant.
Juan C. Pajo for appellees.

CONCEPCION, *J.:*

In the complaint filed in this case, plaintiffs-appellants pray the court:

"(1) To declare the plaintiffs herein co-owners *pro-indiviso* of one-half of the land above-described, that is to say, of a portion with an area of 58,073 square meters, with the improvements thereon;

"(2) To order the defendants and their agents to turn over the possession of said portion to the plaintiffs or their agents;

"(3) To compel the defendants, or any of them, to deliver up to the plaintiffs or their agents the title, deeds, and other pertinent papers thereto for the corresponding annotation, subdivision and transfer of said portion in plaintiffs' names;

"(4) To sentence the defendants to pay the plaintiffs or their agents the sum of ₱5,000, Philippine currency, as damages for unlawfully withholding the ownership and possession thereof to the latter since the death of Lucia Fiel and up to and including the filing of the complaint herein set forth;

"(5) To award costs to the plaintiffs herein; and

"(6) To grant them such other just and equitable relief meet and proper in the premises."

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[1] *See* Resolution of the Supreme Court of March 22, 1950. Appeal by certiorari was dismissed, upon the ground that the case was correctly decided by the Court of Appeals.

At the hearing, in the Court of First Instance of Leyte, the parties introduced oral and documentary evidence, in addition to a partial stipulation of facts (Exhibit X), in which the following are admitted as true:

"1. That the land litigated is Lot No. 10521, Case 13, of the Ormoc cadastre, covered by original certificate of title No. 1350, issued on November 18, 1937, and described in paragraph 2 of the complaint;

"2. That with respect to the defendants Floro Gonzaga and Maria Gonzaga, and Genaro Empleo, and their co-defendants, Roque Aparis, Patricio Wagas and Aurelio Bensilao, they have no conflicting claims on the portions respectively claimed by them;

"3. That the defendants, Floro and Maria Gonzaga, and Genaro Empleo, claim title to a portion of said lot by virtue of a deed of absolute sale executed by Pedro Bation during his lifetime on September 15, 1941, before Notary Public Braulio Estrera in favor of the spouses, Pedro Gonzaga and Esperanza Marces, both deceased, which deed is duly registered in the office of the Register of Deeds at Tacloban, Leyte, on October 31, 1941, a copy of which is attached hereto, marked Exhibit A for said defendants;

"4. That with respect to defendant Genaro Empleo, his interest on that portion of land which is claimed by defendants, Floro and Maria Gonzaga, is dependent on the validity of their title, by virtue of a deed of sale on installment basis executed by the latter before Notary Public Lucilo A. Conui on March 11, 1946, in favor of the former, which is not registered in the Registry of Property, a copy of which is attached hereto and marked Exhibit B for the defendant Genaro Empleo;

"5. That the defendant Roque Aparis bases his claim to a portion of said titled lot on a deed of sale dated July 15, 1940, executed by Pedro Bation in his favor and registered in the office of the Register of Deeds at Tacloban, Leyte, under Act 3344. A copy of said deed is hereto attached marked Exhibit I and made a part hereof;

"6. That the defendants, Patricio Wagas and Aurelio Bensilao are vendees successively, one from the other, of the portion of said lot acquired by Roque Aparis from Pedro Bation as alleged in the immediately preceding paragraph, which sales are evidenced by absolute deeds of sale dated March 26, 1946, and April 15, 1946, registered at Tacloban, Leyte, under Act 3344, and marked Exhibits 2 and 3, respectively;

"7. That the defendants Floro and Maria Gonzaga had been in possession, personally and through their predecessors in interest, Pedro Gonzaga and Esperanza Marces, of the portion claimed by them from September 15, 1941 to the date of sale by them of said portion to Genaro Empleo on March 11, 1946;

"8. That the defendants, Roque Aparis, Patricio Wagas and Aurelio Bensilao, each for himself, states that possession of the portion bought by Roque Aparis from Pedro Bation above adverted to has passed to Aurelio Bensilao through his vendor Patricio on the dates of sale referred to, and that said portion was acquired by the present possessor and alleged owner when the plaintiffs had started claiming their portion of said lot;

"9. That the portion already mentioned and covered by the deeds of sale above referred to have always been possessed and cultivated by their holders from the time of acquisition to the time of disposal or sale, if any has been made;

"10. That the defendants already named admit that the herein plaintiffs are the legitimate nephews and only surviving heirs in law of the late Lucia Fiel who is now dead;

"11. That the land litigated is the only conjugal property acquired and left by the deceased spouses, Lucia Fiel and Pedro Bation, who died on the dates and at the times alleged in the complaint;

"12. That the deceased, Pedro Bation, left two legitimate brothers, Martin and Roman Bation, as his only surviving heirs in law;

"13. That the land litigated is covered by Tax No. 24503, in the name of Pedro Bation, with an assessed value of ₱2,159.01, and a declared area of 196,274 square meters;

"14. That the said sales were made by Pedro Bation while he was widower, that is to say, after the death of his wife, Lucia Fiel."

It appears that plaintiffs-appellants and defendants-appellees claim an interest in the parcel of land in question as heirs and/or successors in interest of the spouses Lucia Fiel, *alias* Lucila Fiel, and Pedro Bation, respectively; that the former died in December, 1934 and the latter in 1943; that on November 18, 1937, original certificate of title No. 1350, of the office of the register of deeds for the Province of Leyte, covering the lot in question, was issued in favor of "Pedro Bation of legal age, filipino, married to Lucila Fiel and residing in Tugbon, Ormoc, Leyte" (Exhibit 4); that during the period from February 1, 1937, to September 15, 1941, Pedro Bation had conveyed several portions of said lot to defendants herein, as set forth in the agreed statement of facts above quoted; and that Pedro Bation and Lucia Fiel, *alias* Lucila Fiel, were survived by no descendants or ascendants, but, the former, by his brothers Martin Bation and Roman Bation, and, the latter, by her nephews, Andres, Arcadio and Teofilo, all surnamed Fiel.

The only question for determination in this case is whether the land in question belonged to the conjugal partnership of the spouses Pedro Bation and Lucia Fiel *alias* Lucila Fiel, or was the exclusive property of Pedro Bation. Upon this point, the lower court had the following to say:

"Los demandantes hacen dimanar su derecho como condueños del terreno cuestionado del hecho de ser los únicos herederos de su finada tía Lucia Fiel. Que son herederos de Lucia Fiel, es hecho que no se halla discutido.

"Los demandantes alegan que el terreno en cuestión era ganancial de los esposos Pedro Batión y Lucia Fiel. Los demandados admiten en sus respectivas contestaciones y así también consta en la estipulación parcial de hechos, que realmente el terreno en cuestión era ganancial de los referidos esposos.

"Se ha convenido además por las partes en dicha estipulación parcial de hechos que Lucia Fiel ya ha fallecido y que Pedro Batión vendio porciones del terreno cuestionado, después de muerta ya Lucia Fiel.

"Los demandantes, sin embargo, en vez de someter la causa de acuerdo con los escritos y la estipulación de hechos, presento pruebas que demuestran concluyentemente que Lucia Fiel fallecio en el mes de diciembre de 1934 y que el título gratuito del terreno en cuestión,

que habia sido objeto de solicitud de homestead por Pedro Batión, fue expedido en 18 de noviembre de 1937, segun consta en el mismo certificado original de título No. 1350, exhíbito 4.

"Los hechos expuestos en el anterior párrafo, que han sido probados por los mismos demandantes, vienen a destruir completamente el hecho alegado por los demandantes y admitido por los demandados de que el lote en cuestión era ganancial de los esposos Pedro Batión y Lucia Fiel. De conformidad con las pruebas aportadas por los demandantes mismos, dicho terreno no puede considerarse ni tiene el carácter de ganancial de los referidos esposos.

"El predio en cuestión era anteriormente un terreno público, que fue solicitado como *homestead* por Pedro Batión del Gobierno. No consta cuando se presento la solicitud de homestead ni cuando fue admitida y aprobada la solicitud. Puede suponerse, sin embargo, que cuando se presento la solicitud, Pedro Batión ya estaba casado con Lucia Fiel, pues el certificado de título de homestead fue expedido a nombre de Pedro Batión, casado con Lucia Fiel.

"El certificado de título del terreno solo fue expedido a favor de Pedro Batión en 18 de noviembre de 1937, y solamente desde esta fecha puede y debe considerarse que el título del terreno habia pasado del Gobierno a Pedro Batión, y desde entonces este se hizo dueño del predio en litigio. El terreno no puede ser considerado, por tanto, como ganancial de el y su esposa Lucia Fiel, que habia fallecido en el mes de diciembre de 1934.

"Se dira que segun el artículo 1401, 2.° del Código Civil, son también bienes gananciales 'los obtenidos por la industria, sueldo o trabajo de los conyuges, o de cualquiera de ellos', y el lote en litigio fue solicitado como homestead por Pedro Batión cuando ya estaba casado con Lucia Fiel. Podria tener valor este argumento si el título del predio hubiere sido adjudicado a Pedro Batión en vida aun de Lucia Fiel. Pero como claramente consta, el título fue expedido el 18 de noviembre de 1937 y solamente desde dicha fecha, Pedro Batión se hizo dueño efectivo de la finca. Antes de la expedición del certificado de título, después de aprobada por el Director de Terrenos la solicitud de homestead, Pedro Batión solo tenía un derecho incoativo de poder hacerse dueño del terreno solicitado, y la efectividad de su derecho dependia del cumplimiento de las condiciones previas requeridas por la ley.

> 'The benefits provided in the Public Land Act for applicant's immediate predecessors are or constitute a grant or concession by the State; and before they could acquire any right under such benefits, the applicant's immediate predecessors in interest should comply with the condition precedent for the grant of such benefits.' (Oh Cho *vs.* Director of Lands, G. R. 48321, Aug. 31, 1946, The Lawyers' Journal, Vol. XII, No. 1, page 32, Jan. 31, 1947).
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> 'Mientras no expida el título o patente definitivo del terreno al solicitante el Gobierno sigue siendo el dueño.' (Jocson *vs.* Soriano, 45 Jur. Fil., 393, 396).

"El hecho de que Pedro Batión hubiere comenzado a tomar posesión y roturar el terreno solicitado en vida aun de Lucia Fiel, no es suficiente para considerar dicho terreno como ganancial de ambos, pues entonces no tenian ningun derecho efectivo y no habian adquirido ningun derecho más que el privilegio de poseer y labrar el terreno para ser algun día dueños del mismo si el Gobierno les otorgaba el título correspondiente.

"Solamente pueden considerarse como bienes gananciales los adquiridos durante el matrimonio, y no los adquiridos después de su disolución, y la sociedad de gananciales se disuelve con la muerte de uno de los conyugues.

"El certificado gratuito de título No. 1350, exhíbito 4, esta expedido a nombre de Pedro Batión, casado con Lucia Fiel. Es erróneo el estado civil de Pedro Batión, pues en dicha fecha ya era viudo. El hecho de que estuviera expedido el título a nombre de Pedro Batión, casado con Lucia Fiel, no quiere decir que el terreno fuere ganancial, pues es solamente un requisito exigido mencionar el estado civil y el nombre del conjuge, caso de estar casado, el beneficiario del título.

"En la decisión promulgada en el asunto catastral correspondiente sobre el lote en cuestión ya transcrita, no se ha adjudicado el terreno a nombre de Pedro Batión y de los demandantes, ni estos presentaron reclamación alguna en dicho asunto. Solo se confirma en dicha decisión la anterior adjudicación. Como en el certificado de título No. 1350, exhíbito 4, no se decia que el lote cuestionado estaba adjudicado a los esposos Pedro Batión y Lucia Fiel, era aquella la oportunidad para los demandantes para establecer su derecho y solicitar la partición del lote. No lo han hecho. La decisión en procedimientos de catastro causa estado no solamente entre las partes que han comparecido, sino para todo el mundo (art. 38 de la Ley del Registro de la Propiedad No. 496 y sus enmiendas), y el que dejare de comparecer y reclamar, perdera su derecho. (Director de Terrenos *vs.* Abada, 41 Jur. Fil., 75.)

"Lucia Fiel no habia adquirido en vida ningun derecho sobre el lote solicitado como homestead por su marido; no podia, por consiguiente, transmitir ningun derecho a sus herederos a su muerte. Ni siquiera ella tenía derecho preferente a suceder a su marido en el homestead en el caso de que Pedro Batión hubiere muerto antes de expedirse el título del terreno. De acuerdo con las disposiciones del artículo 103 de la Ley No. 2874, tal como fue enmendado por el artículo 20 de la Ley No. 3517, cuando el solicitante falleciere antes de expedirse el título del terreno, le sucederan sus herederos legales, y no la viuda, como estaba dispuesto en el artículo 103 de la Ley No. 2874 antes de ser enmendado.

"La conclusión del Juzgado es que el lote cuestionado no era ganancial de los esposos Pedro Batión y Lucia Fiel, sino que era exclusivo de este.

"Sentada la anterior conclusión en cuanto al carácter del bien litigado, surge la cuestión de cual debe prevalecer en la resolución de esta causa; la admisión hecha por los demandados en sus escritos de contestación y en la estipulación parcial de hechos de que la finca en cuestión era bien ganancial de los esposos Pedro Batión y Lucia Fiel, o el resultado de las pruebas presentadas por los mismos demandantes que demuestra a juicio del Juzgado que el cuestionado no era ganancial de los referidos esposos sino bien exclusivo de Pedro Batión.

"La sentencia en una causa debe fundarse en las alegaciones y en las pruebas; más en estas que en aquellas.

> '*Judgment.*—The conclusion of law upon facts found, or admitted by the parties, or upon their default in the course of the suit.' (Cyclopedic Law Dictionary, 2nd ed. page 561).
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> 'La sentencia debe ajustarse a lo que se alegue en los escritos y a lo que acrediten las pruebas, y no cabe conceder un remedio que pugne especialmente con lo primero o lo segundo.' (Ramirez *vs.* Orientalist Co., 38 Jur. Fil., 673, 687.)

"Cuando hubiere una discrepancia entre lo alegado y probado, el Juzgado tiene atribuciones, aun después de dictada sentencia, para ordenar lo enmienda de los escritos con el fin de ajustarlos al resultado de las pruebas. Pero aun cuando no se presentare moción alguna para la enmienda de los escritos o no se ordenare la misma, el Juzgado puede decidir el asunto de acuerdo con los hechos pro-

bados. (Art. 4, Regla 17 de los Reglamentos de los Tribunales; Ramirez *vs.* Orientalist Co., 38 Jur. Fil., 673; 687.)

"De lo expuesto se puede inferir que la sentencia debe principalmente fundarse en los hechos que se estimen probados en el juicio.

"En el caso presente no existe discrepancia entre lo alegado y lo probado; solo existe conflicto entre las admisiones de los demandados de que el lote en litigio era ganancial de los esposos Pedro Batión y Lucia Fiel y el resultado de las pruebas aportadas por los mismos demandantes. Repetimos, que la cuestión que debe resolverse es cual debe prevalecer: las admisiones o las pruebas aportadas por los mismos demandantes.

"Desde luego que si las pruebas que destruyen las admisiones hubieran sido presentadas por los demandados, las mismas no debieran ser tenidas en cuenta, pues los demandados estarian en estoppel y no deben ser permitidos a presentar pruebas contrarias a sus admisiones.

> 'Es doctrina bien conocida la de que la admision hecha en un escrito de alegaciones no puede ser controvertida por la parte que la ha hecho; y todas cuantas pruebas presente en contra de aquella o que la impugnan, no seran tenidas en cuenta por el tribunal, haya o no objetado en contra suya la parte contraria.' (Ramirez *vs.* Orientalist Co., 38 Jur. Fil., 673, 686.)

"Pero en este caso son los mismos demandantes, a cuyo favor se habian hecho por los demandados las admisiones, los que presentaron pruebas que impugnan y destruyen dichas admisiones. No existe razón alguna porque no deben ser tenidas en cuenta dichas pruebas, pues ello quiere significar sencillamente que los demandantes han renunciado expresamente a su derecho a someter la causa para decisión sin necesidad de pruebas ulteriores, y ha sometido dichas pruebas para que sean tenidas en cuenta por el tribunal, como así lo hara este Juzgado.

"En virtud del referido conflicto, el Juzgado tiene que dar más peso a las pruebas que a las admisiones. La admisión de que el lote en cuestión era bien ganancial de los esposos Pedro Batión y Lucia Fiel es una conclusión de derecho; no es una conclusión de hecho. No incumbe a las partes sentar conclusiones de derecho: es una atribución exclusiva del Juzgado. Cuando la conclusión de derecho es contraria a las disposiciones de ley o errónea, dicha conclusión no debe ser tenida en cuenta. Las conclusiones legales deben fundarse en los verdaderos hechos y en este caso, los hechos establecen claramente, como se ha expuesto, que el lote cuestionado no era ganancial, de los esposos Pedro Batión y Lucia Fiel."

With due respect to the opinion of His Honor, the Trial Judge, who had made an earnest effort, worthy of commendation, to decide the case in accordance with the facts and law applicable to the same, we find ourselves unable to agree with his appreciation of both factors and the conclusion drawn therefrom. To our mind, the issue hinges on the nature of the rights existing immediately prior to the issuance of a homestead patent. In this connection, the Supreme Court of Louisiana said, in the case of Smith et al. *vs.* Anacoco Lumber Co. Inc. et al., (157 La., 466; 102 So. 574):

"The question submitted to us, therefore, resolves itself into this: Does the vesting of the equitable title to a homestead in

the entryman, by the making of final proof, before the dissolution of the community, make the homestead *community* property, when, as in the case at bar, the entry was made and the homestead occupied and cultivated by the entryman during the existence of the community? We think that it *does*. In the case of Brown *vs.* Fry. 52 La. Ann. 58, 26 So. 748, such was the effect of the ruling. In that case, the entryman, who was married and living in community with his wife, entered a homestead under the laws of the United States. After having resided on the homestead with his family, and after having cultivated it for the time required by law, he made final proof. Before the issuance of the final receipt and the patent, his wife died. The question arose as to whether the property belonged to the community which had existed between the entryman and his wife, and this court held that it did, and in so ruling said:

> 'It only remained for the government to issue the final receipt. No power—not even the government itself—could, in law, divest the community of a right to a homestead which it had well earned, although a final receipt had not been issued at the date that the community was dissolved by the death of the wife.' "

Referring to a previous decision, the court further said in the same case:

"In the case of Wadkins *vs.* Producers' Oil Co., 130 La., 308, 57 So., 937, it appears that Wadkins settled upon a tract of land, forming a part of the public domain, with the intention of entering the tract as a homestead. After settling upon it he married, and later filed his application to enter the land under the homestead laws of the United States. Before he had occupied it for five years his wife died. He continued to occupy the land after her death, and at the expiration of the required period made final proof, and obtained a patent. Later he sold the property. Some time after the sale, the only surviving child of the marriage, a daughter, brought suit to recover a half interest in the property, on the ground that the land, having been entered during the existence of the community, and occupied a part of the time during its existence, was community property, and that she, the daughter, as the heir of her mother, was entitled to her mother's half of it. In this court, plaintiff's demand was rejected. The case was taken to the Supreme Court of the United States, and the decree of this court was there affirmed.

"While the facts of the case are different from those in the case at bar, at least, in two important respects, yet the opinion rendered by the Supreme Court of the United States contains expressions which, in our view, show when the rights of the community attach. The court, in its opinion, said:

> 'There can be no doubt that Wadkins' inchoate right was initiated by his settlement, and that, as between him and any intervening claimant, his perfected right evidenced by the patent related back to the time of his settlement (Shepley *vs.* Cowan, 91 U. S., 330, 338, 23 L. Ed., 424, 427; Weyerhaeuser *vs.* Hoyt, 219 U. S., 380, 388–390, 55 L. Ed., 258, 261–263, 31 Sup. Ct. Rep., 300); but he did not acquire any vested interest in the land until he had *fully complied* with the provisions of the homestead law, and submitted proof thereof at the local office. *Prior to that time* his right was essentially *inchoate* and exclusively within the operation of the laws of the United States, and those laws, as we have seen, fully dealt with the

subject of which should be the beneficiary of a compliance with them, thereby excluding state laws from that field. This is a manifest deduction from McCune *vs.* Essig (199 U. S., 382, 26 S. Ct., 78, 50 L. Ed. 237). 'Wadkins *vs.* Producers' Oil Co., 227 U. S., 368, 33 S. Ct. 380, 57 L. Ed. 551.'" (Italics supplied.)

In Ahern *vs.* Ahern et al. (31 Wash., 334, 71 P., 1023), the language used was:

"In Kromar *vs.* Friday, 10 Wash., 621, 39 Pac., 229, 32 L. R. A., 671, it was decided that where the equitable title was vested in the community, and the legal title was not obtained until after the death of one of the spouses, the legal title also then vested in the community. * * *. In Forker *vs.* Henry, 21 Wash., 235, 57 Pac., 811, we held that a homestead settled upon and improved by a woman *before* marriage, who *continued* to reside there, together with her husband, after her marriage, and to whom a patent was issued therefor after final proof was made, was the *separate* property of the wife. This decision was rendered upon the theory that, if either spouse *before* the marriage had acquired an *equitable* right to property which was *perfected* after marriage, the status of the property would *follow* the right of the spouse who had an equitable interest in the property before marriage. The same reasoning would compel the holding in this case that the property was the property of the wife, she being one of the community at the time the provisions of the law were complied with, which compliance secure to the community the right to obtain title to the property. In the case just cited, after laying down the rule announced above, it was said: *'But the rule also seems to prevail in favor of the community as to the title initiated during the community and perfected after the dissolution of the marriage.'* As sustaining this rule see, also, Caruth *vs.* Grigsby, 57 Tex., 259; Hodge *vs.* Donald, 55 Tex., 344; Garter *vs.* Wise, 39 Tex., 273; Canon *vs.* Murphy, 31 Tex., 405; Wilkinson's Heirs *vs.* Wilkinson, 20 Tex., 237; Yates *vs.* Houston, 3 Tex., 433. We know of no cases holding to the contrary, and, even conceding, without deciding, that a construction of the homestead laws is necessary, it seems to be the doctrine of reason and justice that, *where the community has done all that the law requires it to do, the equitable title vests;* that it is the doing of the thing required, and not the proof of the doing, which meets the requirements of the law; that the proof is only evidentiary matter which establishes the fact which already existed. In addition to this, the Supreme Court of the United States has uniformly held that the right to a patent, once vested, is treated by the government, when dealing with the public lands, as equivalent to a patent issued; that, *when in fact the patent does issue, it relates back to the inception of the right of the patentee;* and that before such title passes, but after the acquiring of the right to the title, the government simply holds the title in trust for the benefit of the owners of the equitable title. So that, *when the provisions of the homestead law had been complied with by this community, the equitable title vested in the community and, when the legal title passed from the government of the United States, it related back to the inception of the right of the patentee.*" (Italics supplied.)

These principles have been adopted in our jurisdiction. Thus, in Balboa *vs.* Farrales (51 Phil., 498) it was held that:

"When a homesteader has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, he acquires a *vested interest* therein, and is to be regarded as the *equitable owner* thereof. Where the right to a patent to land has once become vested in a purchaser of public lands, it is equivalent to a patent actually issued. *The execution and delivery of the patent, after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with the duty.* Even without a patent, a perfected homestead is a *property right* in the fullest sense, unaffected by the fact that the paramount title to the land is still in the Government. Such land may be conveyed or inherited. No subsequent law can deprive him of that vested right." (Syllabus [Italics supplied].)

It is apparent from the foregoing that the decisive factor, in order to determine whether a land acquired by homestead is conjugal property or belongs to one only of the spouses, is not the date of issuance of the homestead patent, but the time of fulfillment of the requirements of the Public Land Law for the acquisition of a right to such patent. Thus,

"Failure of deceased entryman's widow to make final proof and obtain certificate of title to public land until after her marriage did not make land community property of herself and surviving husband. Brewer *vs.* Hill (1934) 152 So., 75, 178 La., 533, certiorari denied. 54 S. Ct., 631, 292 U. S. 626, 78 L. Ed. 1481." (43 U.S.C.A., 1946 Cumulative Annual Pocket Part, p. 24.)

Indeed, sections 13 and 14 of Act No. 2874 (as amended by Act No. 3517), pursuant to which the homestead patent Exhibit 4 was issued, provide:

"SEC. 13. Upon the filing of an application for a homestead, the Director of Lands, if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of ₱5, Philippine currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land.

"SEC. 14. No certificate shall be given or patent issued for the land applied for until at least one-fourth of the land has been improved and cultivated. The period within which the land shall be cultivated shall not be less than one nor more than five years, from and after the date of the approval of the application. The applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title. If at the date of such notice or at any time within the two years next following the expiration of said period, the applicant shall prove to the satisfaction of the Director of Lands by affidavits of two credible witnesses, that he has resided in the municipality adjacent to the same, and has cultivated at least one-fourth of the land continuously since the approval of the application, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has complied with all the requirements of this Act, then, upon the payment of five pesos, he shall be entitled to a patent."

Referring now specifically to the case at bar, neither said homestead, patent, Exhibit 4, nor the testimonial or

other documentary evidence introduced in this case, shows that the conditions essential to the accrual of a right to a patent were not fully complied with until after the death of Lucia or Lucila Fiel. On the contrary, the lower court assumed, and, we believe, correctly, that the application for a homestead must have been filed, and the possession and cultivation of the land by Pedro Bation begun, in the lifetime of his wife. Although direct evidence that a vested right to a homestead patent existed before the dissolution of their marriage has not been introduced, it is clear that the stipulation to the effect

> "That the land litigated is the only conjugal property acquired and left by the deceased spouses, Lucia Fiel and Pedro Bation, who died on the dates and at the times alleged in the complaint"

rendered such evidence unnecessary for it implied an admission by the parties that the right had fully accrued during coverture, since otherwise the property in question could not be a "conjugal property" of the "deceased spouses Lucia Fiel and Pedro Bation," as, we hold, therefore, it was. This is borne out by the fact that the homestead patent was issued to Pedro Bation "married to Lucila Fiel," thus indicating clearly that it referred back and retroacted to his condition, status and rights prior to the dissolution of the marriage by the death of Lucila Fiel, and that it was not a mere error in the description of his status at the time of the issuance of the patent, as the lower court had considered it.

In view of the foregoing, and there being no question that plaintiffs are the sole heirs and successors to the interest of Lucila Fiel in her conjugal partnership with Pedro Bation, and that pursuant to section 685 of Act No. 190, as amended by Act No. 3176, the conveyances made by Pedro Bation are null and void, except as regards his share in the property in dispute, the decision appealed from is hereby reversed and judgment is rendered declaring that plaintiffs-appellants are owners of one-half pro-indiviso of said property. Inasmuch, however, as the lower court had, for obvious reasons, refrained from passing upon plaintiffs-appellants' claim for damages, and the responsibility, if any, of the defendants-appellees for such damages, on which we do not express any opinion, might not necessarily be joint and several, let this case be remanded to the lower court for further proceedings, not inconsistent with this decision, with a view to passing upon said claim and determining the nature and extent of the responsibility, if any, of each defendant-appellee in connection therewith. With costs against the defendants-appellees. It is so ordered.

Dizon and *De Leon, JJ.*, concur.

Judgment reversed; case remanded to lower court with instruction.

[No. 2083-R. January 9, 1950]

MARTA LACHICA, plaintiff and appellee, *vs.* ROSARIO GAYOSO and PANAY ELECTRIC CO., INC., defendants. PANAY ELECTRIC CO., INC., defendant and appellant.

DAMAGES; DEATH BY ACCIDENTAL ELECTROCUTION; ELECTRIC COMPANY LIABLE ALTHOUGH ITS NEGLIGENCE WAS NOT THE SOLE PROXIMATE CAUSE OF DEATH; ARTICLES 1902 AND 1903, CIVIL CODE.—An electric company is liable for the death of a person through its negligence where, as in the case at bar, there has been no warning to the victim, and the transmission of electricity was due to the *innocent* act of a *third party* (the placing of the line connecting the drainage pipe with the ventilation pipe) and the act of the victim (that of holding the ventilation pipe) was perfectly innocent and licit. "A defendant may be liable even if the accident was not caused by his sole negligence. He is liable if his negligence concurred with that of another, or with the act of God, or with an inanimate cause, and became a part of the direct and proximate cause, although not the sole cause." * * * "It is universally agreed that, if the damage is caused by the concurring force of the defendant's negligence and some other force for which he is not responsible, including the act of God or superhuman force intervening, the defendant is nevertheless responsible if his negligence is one of the proximate causes of the damage." (Harrison *vs.* Kansas Electric Co., 7 L.R.A., (N.S.) 293, 301.) "If the defendant is negligent and his negligence combines with that of another, or with any other independent intervening cause, he is liable although his negligence was not the sole negligence, or the sole proximate cause, and although his negligence, without such other independent, intervening cause, would not have produced the injury." (18 Am. Jur., 449, 450.) (See: Astudillo *vs.* Manila Electric Company, 55 Phil., 427; Del Rosario *vs.* Manila Electric Company, 57 Phil., 478.)

APPEAL from a judgment of the Court of First Instance of Iloilo. Imperial Reyes, J.

The facts are stated in the opinion of the court.

Felipe Ysmael for appellant.
Mapa, Jr. and *G. Gimotea* for appellee.

CONCEPCION, *J.:*

This is an action to recover damages for the death, by accidental electrocution, of Pedro Pabiona, husband of plaintiff Marta Lachica. The defendants are Rosario Gayoso, owner of the premises in which the accident took place, and the Panay Electric Co., Inc., which furnished the electric current.

After due hearing, the Court of First Instance of Iloilo rendered a decision, the dispositive part of which reads as follows:

"Por tanto, se dicta decisión en este asunto, absolviendo de la demanda a la demandada Rosario Gayoso, pero se condena a la demandada Panay Electric Co., Inc., a pagar a la demandante, Maria Lachica, la suma de Dos mil (₱2,000) pesos, con intereses legales desde la interposición de la demanda, y las costas."

The Panay Electric Co., Inc., has appealed from this decision and its counsel now alleges that the lower court erred.

1. "Al no declarar que la causa próxima del accidente fué el alambre que se había colocado entre el tubo de desague del alero del techo de la casa de autos y el tubo de ventilación del pozo negro de la misma, alambre éste que no lo colocó ni la Panay Electric Co., Inc., ni ningún agente o mandatario de ésta, y que causó la solución de continuidad eléctrica del 'candulite pipe' con el techo, con el tubo de desague y el tubo de ventilación del pozo negro, tubo de ventilación que agarró Pedro Pabiona y produjo su muerte casí instantanea por electrocución; es decir, el Juzgado inferior erró al no declarar que de no haber sido por este alambre que se había puesto por una persona completamente extraña a la Panay Electric Co., Inc., la corriente eléctrica no hubiese corrido al tubo de ventilación del pozo negro y que Pedro Pabiona no hubiera muerto al agarrar dicho tubo de ventilatión.

2. "Al declarar, basado meramente en una suposición, de que hubo negligencia de parte de la Panay Electric Co., Inc., en el caso de autos; y

3. "Al no absolver a la demandada Panay Electric Co., Inc., de la demanda presentada de esta causa."

Most of the facts are not disputed. In the language of His Honor, the Trial Judge:

"Consta probado que, hacia las cuatro de la tarde del 11 de febrero de 1946, Pedro Pabiona, un viejo setentón fué encontrado muerto, por electrocución, debajo de la cocina de la casa de la demandada Rosario Gayoso, sita en la calle Gral. Luna, de esta ciudad. La demandante alega que su mencionado esposo, desde hace un mes (desde febrero 5 de 1946 según la demanda) hasta su muerte, ocurrida el 11 de febrero de 1946, estaba empleado como obrero de Rosario Gayoso para cortar hierbas en el jardín de la casa de ésta. Hasta aquí las pruebas de la demandante.

"La demandada Rosario Gayoso, por su parte, ha probado que Pedro Pabiona no era obrero suyo permanente sino que era un trabajador casual, habiendo sido empleado por ella en los días 8 y 9 de febrero de 1946, para cortar hierbas en su jardín, pagandole un jornal de ₱1.50 al día. El 9 de febrero de 1946, un sábado, Pedro Pabiona se despidió diciendo que ya no volvería a trabajar, por lo que se le pagó su jornal correspondiente a dos días.

"El lunes siguiente, 11 de febrero de 1946, el tiempo estaba mal pues llovió desde la mañana hasta la tarde y cuando Pedro Pabiona se presentó en la casa de Rosario Gayoso, hacia las dos de la tarde, solicitando trabajar de nuevo, la última le contestó que no quería admitirle para aquel día. Algún tiempo después, Alice Schmid, nieta de Rosario Gayoso, percibió algunos quejidos que provenían de los bajos de la cocina de la casa, descubriendo momentos después a Pedro Pabiona que yacia en tierra sin poder moverse. Trató de ayudarle, pero no pudo acercársele, pues notó que el cuerpo de Pedro Pabiona, así como la tierra cerca de él, estaba electrificado. Alice Schmid, creyendo que la corriente eléctrica venía de dentro de la casa, desconectó el 'switch' principal del sistema de alumbrado de dicha casa, pero no logró parar la corriente eléctrica y se tuvo que avisar inmediatamente a la compañía electricista, Panay Electric Co., Inc. De resultas del accidente, Pedro Pabiona murió aquella misma tarde."

It further appears that defendant Rosario Gayoso, who is 79 years of age, lived, in her aforementioned house,

with her granddaughter Alice Schmid; that none of them knew anything about electricity; that, in order to have electric light in her house, Rosario Gayoso paid appellant herein the corresponding fees for the inspection of the electric wirings and appliances installed in the premises; and that, thereafter, appellant connected the same with its main lines.

Referring to the first assignment of error, it is admitted that the death of Pedro Pabiona occurred as follows: The main lines of appellant herein and the installation in the house of Rosario Gayoso were connected by a "candulite pipe", through which the electricity passed immediately before reaching the electric meter in the house, after which meter the fluid was distributed within the premises. The end of the "candulite pipe" which received the current coming from the main lines, adjoined the outer part of the outside partition of the house, immediately under the eaves and over an awning of galvanized iron, of which material the roof was, also, made. Said pipe—which looks very much like an ordinary water pipe—was, moreover, directly in contact with the galvanized iron awning (*media agua*). On the date of the occurrence, the wires, or part of the wires, inside the "candulite pipe" were uncovered, with the result that the pipe, the galvanized iron awning and the entire roofing were then electrified, and that the fluid passed from the roof to a drainage pipe thereof, made of the same material, outside the partition wall of the kitchen. One end of a metal line had been tied, however, to said drainage pipe and the other end to the ventilation pipe of a sewer deposit, a few feet away, presumably in order that pieces of wet cloth used in the kitchen could be strung thereon for drying purpose. Thus, the electricity coming from the roof and the drainage pipe was transmitted to the ventilation pipe of the sewer deposit, so that when Pedro Pabiona leaned on, or held, said ventilation pipe in the afternoon of February 11, 1946, he was, accordingly, electrocuted with fatal results.

Inasmuch as the ventilation pipe would not have been charged with electricity had it not been for the metal line which connected it with the drainage pipe, appellant contends that it should not be held responsible for the death of Pabiona, the proximate cause thereof having been—according to appellant—said line, which had not been installed by appellant or its agents. There is no merit, however, in this contention, for Pedro Pabiona would not have been electrocuted, despite said line connecting the drainage pipe with the ventilation pipe, if the former and the roof had not been electrified, and this would not have happened had the "candulite pipe" been in good condition at the time of the occurrence. In fact, Pabiona, or someone else, might have received an electric discharge by

holding either the lower end of the drainage pipe—which was within the reach of a man standing on the ground—or a portion of the pipe adjoining a window in the kitchen. In this connection, it is well-settled that

"* * * The law is well settled in this state that 'a defendant may be liable even if the accident was not caused by his sole negligence. He is liable if his negligence concurred with that of another, or with the act of God, or with an inanimate cause, and became a part of the direct and proximate cause, although not the sole cause.' * * * 'It is universally agreed that, if the damage is caused by the concurring force of the defendant's negligence and some other force for which he is not responsible, including the act of God or superhuman force intervening, the defendant is nevertheless responsible if his negligence is one of the proximate causes of the damage, within the definition already given. It is also agreed that, if the negligence of the defendant concurs with the other cause of the injury in point of time and place, or otherwise so directly contributes to the plaintiff's damage that it is reasonably certain that the other cause alone would not have sufficed to produce it, the defendant is liable, notwithstanding he may not have anticipated the interference of the superior force which, concurring with his own negligence, produced the damage. But, if the superior force would have produced the same damage whether the defendant had been negligent or not, his negligence is not deemed the cause of the injury.'" Harrison *vs.* Kansas Electric Light Co., 7 L.R.A., (N.S.) 293, 301.

"* * * If the defendant is negligent and his negligence combines with that of another, or with any other independent intervening cause, he is liable although his negligence was not the sole negligence, or the sole proximate cause, and although his negligence without such other independent, intervening cause, would not have produced the injury." 18 Am. Jur., 449, 450.

"Parents may recover from a power company for death of their son through electrict shock, though the company's negligence was not the sole cause of the death, provided it contributed proximately thereto." Kribs et al. *vs.* Jefferson City Light, Heat & Power Co., 215 S.W., 762.

"* * * If the charged wire is properly protected, it is comparatively safe under all circumstances; if it is not properly protected, it is dangerous under all circumstances. This being so, there is no reason why the duty of exercising the same high degree of care to safely secure electricity should not be required under all circumstances. The negligence consists in the failure to confine electricity to the place set apart for its use, and it is not so material how many independent agencies intervene if the injury is directly traceable to the failure to perform this duty." Paducah Light, etc. Co., *vs.* Parkman, 156 Ky., 197, 160 S.W., 931, 52 L.R.A., (N.S.) 586.

"La obligación que establece el precitado artículo 1.902 del Código civil, de reparar el daño causado, procede sólo cuando aquél es consecuencia necesaria del acto u omisión, en los cuales haya intervenido culpa o negligencia, no cuando el daño sea *únicamente* imputable a quien lo recibió en su persona o en sus bienes, siendo doctrina sancionada por este Supremo Tribunal que las responsabilidades derivadas de dicho género de obligaciones, por culpa extracontractual en que no ha existido definición previa de culpa penal, precisan para ser exigibles en la vía civil primero, la existencia de actos u omisiones en que intervienen culpa o negligencia y, además,

la prueba de que la culpa o negligencia proviene de la persona a quien se imputa; y tiene asimismo declarado este Tribunal Supremo que la obligación que establece dicho art. 1.902 alcanza al dueño de una cosa por omitir los medios conducentes a la desaparición o corrección de los vicios o defectos de que adolezca, o por no emplear los procedimientos adecuados para evitar sus consecuencias, da lugar a que se produzcan los daños, sin que pueda excusarla de tal obligación la circunstancia de que al adquirir dicha cosa se hallase en igual estado, y hasta se hubieran venido produciendo por el abandono los mismos peligrosos resultados que sirvan de fundamento a la reclamación; y aplicando el precepto y la doctrina al caso del recurso, esta aceptado por las partes y declarado por el Tribunal, como hecho extraño a la discusión litigiosa, que el soporte instalado sobre la casa en que habitaba con su familia Doña Dolores Romero carecía de aquel aislamiento que debía ser técnicamente continua comunicación eléctrica con tierra, con lo que se habría necesariamente impedido que el hilo para tender ropa, atado al poste, adquiera el mismo potencial de la fase superior de la corriente eléctrica, y en tales condiciones de necesario aislamiento, aunque lo hubiese tocado la Sra. Romero, poniéndose en contacto mediante la pieza húmeda de ropa para tenderla en el hilo, la descarga a tierra no habría sido de tensión bastante elevada para producir el accidente que privó de la vida a dicha señora; y, por consiguiente, como quien es causa de la causa es causa del mal causado, y se ha razonado que la deficiencia originada por la falta constante de comunicación con tierra del soporte, coincidiendo con la rotura de uno de los aisladores, fuese o no esto último debido a un accidente fortuito y para la 'Hidroelectrica', dueña del tendido, inevitable, como es cierta e indudablemente la única responsable de que el soporte no se hallara en el día y ocasión del suceso en buena comunicación eléctrica con tierra, esta omisión, que constituye negligencia indisculpable como contraria al terminante precepto reglamentario, que la imponía la obligación de tener aquel soporte provisto de la indispensable comunicación con tierra, es consecuencia jurídicamente indeclinable que la responsabilidad del siniestro debe atribuirse a la Sociedad dueña de los cables, desprovistos del aislamiento prevenido en la forma y condiciones que el art. 1.903 del mencionado Código civil hace extensiva la obligación impuesta en el que antecede a los dueños o directores de un establecimiento o empresa, respecto de los perjuicios causados por sus dependientes en el servicio de los ramos en que los tuviera empleados o con ocasión de sus funciones; porque si los agentes técnicos de la empresa hubieran realizado la colocación del hilo que comunicase el soporte con tierra, no habría hallado Doña Dolores Romero la muerte en el hecho perfectamente lícito que la experiencia de algunos años, segun reconoce la propia sociedad demandada, venía demostrando que aun en las condiciones meteorologicas que más favorecieron la electrificación de los elementos metálicos existentes en la terraza, no era esta saturación suficiente a producir tan graves siniestros, como no lo habría sido el día 10 de junio de 1922, si el soporte colocado sobre el muro de la casa tuviera la comunicación eléctrica reglamentaria para evitar, como decía el precepto que la exigiera, esta clase de daños, y, por consiguiente, la sentencia dictada por la Audiencia de Valencia, en que se hace el pronunciamiento de la irresponsabilidad de la demandada Compañía contradice la doctrina expuesta en los razonamientos que preceden y ha infringido los preceptos invocados en los tres motivos del recurso, que debe ser íntegramente estimado. (Sent. 24 feb. 1928.—Gac. 18 marzo 1930.)" Enciclopedia Juridica Española, Apendice, 1930, Tomo I, Pagina 676.

"Where primary and secondary electric wires were negligently strung on same poles, owner was liable though wires were brought together by third person's negligence." Hughes et al., *vs.* Southwestern Gas & Electric Co., 143 So., 281.

Indeed, in Astudillo *vs.* Manila Electric Company (55 Phil., 427), the defendant was sentenced to pay damages for the death, through electrocution, of one Juan Diaz Astudillo, who had reached out and grasped a wire coming from a pole situated near the Santa Lucia Gate, Intramuros, City of Manila, despite the fact that the placing of Astudillo's hand on the wire was his sole act. In disposing of this point the Supreme Court said:

"The matter principally discussed is the question of the defendant company's liability under the circumstances stated. It is well established that the liability of electric light companies for damages for personal injuries is governed by the rules of negligence. Such companies are, however, not insurers of the safety of the public. But considering that electricity is an agency, subtle and deadly, the measure of care required of electric companies must be commensurate with or proportionate to the danger. The duty of exercising this high degree of diligence and care extends to every place where persons have a right to be. The poles must be so erected and the wires and appliances must be so located that persons rightfully near the place will not be injured. Particularly must there be proper insulation of the wires and appliances in places where there is probable likelihood of human contact therewith. (20 C. J., pp. 320 et seq.; San Juan Light & Transit Co., *vs.* Requena (1912), 224 U.S., 89.)

"We cannot agree with the defense of the Manila Electric Company in the lower court to the effect that the death of Juan Diaz Astudillo was due exclusively to his negligence. He only did the natural thing to be expected of one not familiar with the danger arising from touching an electric wire, and was wholly unconscious of his peril. Had not the wire caused the death of this young man, it would undoubtedly have been only a question of time when someone else, like a playful boy, would have been induced to take hold of the wire, with fatal results. The cause of the injury was one which could have been foreseen and guarded against. The negligence came from the act of the Manila Electric Company in so placing its pole and wires as to be within proximity to a place frequented by many people, with the possibility ever present of one of them losing his life by coming in contact with a highly charged and defectively insulated wire."

The result was identical in the case of Del Rosario *vs.* Manila Electric Company (57 Phil., 478), which refers to a child who, despite the admonition of his companion to the contrary, touched an electric wire, with fatal consequence. Here, as in Astudillo case, the contact with the wire was due to the exclusive act of the victim, and, yet, the electric company was held liable on account of its failure to take appropriate precautions to prevent the wire from being where it was.

Pursuant to these two decisions, the aforesaid acts of the victims did not relieve the electric company from liability for damages, despite the fact that an electric

wire is itself a warning of danger. If the company was thus liable despite the acts of the *victims* themselves, there is more reason to impose such liability where, as in the case at bar, there has been no such warning to the victim, and the transmission of electricity was due to the *innocent* act of a *third party* (the placing of the line connnecting the drainage pipe with the ventilation pipe) and the act of the victim (that of holding the ventilation pipe) was perfectly innocent and licit.

The other assignments of error deal with the question whether or not the electrification of the roof is imputable to appellant's negligence.

Said condition, it will be recalled, was due to the fact that the "candulite pipe" had direct contact with the galvanized iron awning and that the wires—or part thereof—within the pipe were uncovered at the time of the occurrence, thus permitting the electricity to pass from the wires to the metal cover of the pipe, and from the latter to galvanized iron awning with which it was in contact, thence to the roof, the drainage pipe, the line strung thereto and the ventilation pipe of the sewer deposit. It appears, furthermore, that appellant had assumed the obligation to inspect the electrical installations and appliances in the house, including the "candulite pipe", prior to connecting the same with its main lines, and had charged the corresponding fees for the services which the inspection entailed.

It is now contended that the absence of a protective covering of the wires in the candulite pipe on February 11, 1946, is not chargeable to appellant's negligence because the wires were in perfect condition when they were inspected by the company in November, 1945, and that "possibly" ants had eaten away the covering shortly before the occurrence. The argument is based, however, upon a predicate which has not been established. Besides, the uncovered state of the wires at the time of the occurrence, constitutes *prima facie* proof that such was its condition, also, prior thereto, and imposed upon appellant herein the burden of establishing the contrary by a preponderance of evidence. It was appellant's duty—in order to relieve itself from responsibility—to prove to the satisfaction of the court, not only that an inspection had been made, but, also, that, actually, the wires inside the candulite pipe were then properly insulated. However, apart from a total absence of evidence on the condition of the wires and the candulite pipe when the connection was made by appellant herein, there is no proof on any inspection of either at that time, or prior to, or after, that occasion, but before the occurrence.

Although appellant's witnesses, Raymundo Juaneza and Rosendo Mejica, declared that the insulating cover of the

wires had been eaten up by ants, this testimony is a mere conclusion or opinion which does not suffice to prove what was sought to be established thereby, because the facts from which the conclusion was drawn had not been given, thus depriving the court of the opportunity to ascertain the soundness and correctness of said opinion, and because the same was given by employees of the defendant company who do not appear to be qualified therefor. Thus, notwithstanding the aforementioned positive assertion of its own witnesses, appellant alleges, in its brief, that ants had "*possibly*" destroyed the insulating cover of the wires of the "candulite pipe". In any event, this alleged possibility—based upon an examination made *after the occurrence*—does not show the time of the destruction, much less that it took place *after the alleged inspection* of the candulite pipe by appellant herein and the connection made with its main lines in November, 1945, not *before*.

Again, the defense set up by appellant, in its answer, was that it had "not installed the electric wiring or put the connection therein"; that, immediately, after the accident, appellant had "inspected the wiring installation" in the house of Rosario Gayoso and "found the same to be in order"; and that "the connection into the house" was installed by "the United States Army", because of which the complaint "should be directed, if at all, against the United States Army, and not against the Panay Electric Co., Inc."

Had appellant inspected properly the candulite pipe and found the same, including the wires therein, in perfect condition, at the time of the connection, which now appears to have been made, not by the Army of the United States, but by appellant herein, and had the insulating cover of said wiring really been found, immediately after the accident, to have been destroyed by ants, appellant would have surely made the appropriate allegations to this effect in its answer, instead of setting up the defenses aforementioned. In other words, the variance between the theory sustained during and after the trial and the version given in its answer strongly weakens its oral evidence on this point and, together with the other circumstances already adverted to, warrants the conclusion reached by the lower court.

In short, we hold, that there is *prima facie* evidence that the electrocution and death of Pedro Pabiona were due to appellant's negligence, that said evidence has not been offset by appellant herein, and that, accordingly, the lower court was justified in rendering the decision appealed from, which is hereby affirmed, with costs against said appellant. It is so ordered.

Dizon and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 2225–R. January 9, 1950]

Testate estate of the late CASTOR BENEDICTO, Sr., PAZ DOMINADO, petitioner and appellee, *vs.* JOAQUIN BENEDICTO et als., oppositors and appellants.[1]

WILL; VALIDITY OF WILL; WITNESSES NEED NOT ACTUALLY SEE EACH OTHER SIGN THE WILL.—It is not essential to the validity of a will that each and every one of the witnesses should actually see each other sign thereon. In the language of the Supreme Court, it is enough that "existing conditions and the position of the parties with relation to each other were such that by merely casting their eyes in the proper direction, they could have seen each other sign." (Nera *vs.* Rimando, 18 Phil., 450), as in the case at bar.

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Luis G. Hofileña and *Ezpeleta, Erfe & Ezpeleta* for appellants.

Fulgencio Vega for appellee.

CONCEPCION, *J.:*

This is an appeal from two orders of the Court of First Instance of Iloilo admitting to probate Exhibit G, as last Will and Testament of the late Castor Benedicto, Sr.

It appears that the latter had contracted marriage three times; that, his first wife, Socorro Chavez, had begotten him two children, namely, Dra. Concepcion Benedicto de Pañganiban and Alfredo Benedicto; that, after the death of the first wife, he married Consuelo Tupaz, with whom he had eight children, namely, Asuncion Benedicto, already deceased, who was survived by her minor legitimate children, Maria Teresa, Maria Asuncion and Ernesto, Jr., all surnamed Ledesma, Visitacion Benedicto, likewise, deceased, and survived by her minor legitimate children, Eduardo, Modesto and Orlando, all surnamed Ledesma, and Federico, Joaquin, Lourdes, Francisco, Hilarion and Castor, Jr., all surnamed Benedicto; that, upon the dissolution of the second marriage due to the death of Consuelo Tupaz, he was married to Paz Dominado, who begot him two children, named Manuel Benedicto and Josefa Benedicto; and that, upon his death, which took place in the municipality of Dumangas, Province of Iloilo, on April 8, 1943, his widow and third wife, Paz Dominado, filed, with the Court of First Instance of Iloilo, a petition for the admission to probate of Exhibit G, as his last will and testament, and for her appointment as administratrix of his estate.

[1] *See* Resolution of the Supreme Court of April 27, 1950. Appeal by certiorari was dismissed, the question involved being factual.

The descendants of Castor Benedicto, Sr., by the first and second marriages, objected to the probate of said will upon the ground that it had not been executed in accordance with law; that it had been "procured by undue and improper pressure and influence"; and that the testator's signature thereon had been "procured by fraud or trick." The appointment of Paz Dominado as administratrix was, likewise, opposed by said descendants of the deceased Castor Benedicto, Sr. After due trial, the main evidence introduced in which consisted of the testimony of Benjamin Gumban and the deposition of Cesario Golez, both instrumental witnesses to the execution of the said Exhibit G, the two reliefs prayed for in the petition were granted by an order of January 26, 1946. On motion of the oppositors, the lower court subsequently granted a new trial in which the testimony of Dr. Cornelio T. Blancaflor, the third instrumental witness, was presented. Upon consideration of such additional evidence, together with those already introduced, said court issued, on August 30, 1947, an order ratifying, confirming and maintaining that of January 26, 1946. Hence, this appeal taken by the oppositors-appellants.

The appellee objects to the consideration of the issues raised by the appellants in their brief, upon the ground that copy of the order of January 26, 1946, was received by appellants on February 5, 1946; that although the latter filed the next day an exception and motion for new trial, the same did not suspend the running of the period to appeal because it had no affidavit of merit in support thereof and did not fix the time and place for its hearing, apart from being merely *pro forma*, it having failed to specify the evidence which allegedly belied the findings made in the order of January 26, 1946; and that although an amended exception and motion for new trial was filed on March 27, 1946, the order of January 26, 1946 was then already final and unappealable, more than thirty (30) days having elapsed since February 5, 1946, the date of receipt of copy of said order by appellants herein.

Appellee's contention can not be sustained, however, the original exception and motion for a new trial of February 6, 1946, not having been included, or sought to be included, in said record on appeal, to the approval of which the appellee did not object. Hence, we now have no means to determine the nature and effect of said exception and motion for a new trial and to pass upon the merits of the issue raised by the appellee.

The questions raised by appellants herein are: (1) whether the attestation clause in Exhibit G satisfies the

requirements of the law; and (2) whether the testator and the instrumental witnesses signed the document in conformity with law.

With respect to the first question, appellants allege that the attestation clause in the will is defective because it "does not specifically state that the testator signed each and every page of the will in the presence of the witnesses and that the witnesses signed each and every page of the will in the presence of the testator and of each other" (p. 7, appellants' brief).

The first part of this allegation is false because the attestation clause in Exhibit G explicitly says that:

"Este documento, compuesto de siete (7) páginas utiles, inclusive la página donde esta escrito este atestiguamento, ha sido declarado y suscrito como su ultima voluntad y testamento por el Sr. Don Castor Benedicto quien ha suscrito y firmado al pie del mismo y al margen izquierdo de cada una de sus páginas en la presencia de todos y cada uno de nosotros, * * *."

Relative to the second part of said allegation, the law merely requires the attestation clause to "state", among other things, that the witnesses "witnessed and signed the will and all pages thereof in the presence of the testator and of each other." Such statement is specifically made in the attestation clause aforementioned, the last part of which—which is a continuation of that quoted above—reads:

"* * *, y nosotros tambien lo hemos atestiguado y firmado de la misma manera como lo ha firmado el testador, así es que hemos firmado nuestros nombres en todas las paginas de este testamento en la presencia de dicho testador y en la presencia de cada uno de nosotros, hoy a 25 de enero de 1941 en el districto de Jaro, Ciudad de Iloilo, Filipinas."

Referring now to the second question, the record shows that Exhibit G was executed in the house of Benjamin Gumban in the municipality of Dumangas, Iloilo, on January 25, 1941, during a party, attended by some friends, to celebrate the christening of a daughter of the host and that Exhibit G was signed on a small table in a secluded corner of the living room, although somewhat separated from the main part thereof. Dr. Cornelio T. Blancaflor testified that after signing Exhibit G, he delivered it to Benjamin Gumban; that while the latter was signing thereon he (Dr. Blancaflor) went to the main part of the living room, from which said small table was clearly visible, and then walked to and from the aforesaid corner or nook thereof, "because it was hot" then, and the table was very small; that "afterwards" he "bade good-bye" and left the house; that, owing to the time that had elapsed since then (he testified on April 25, 1946,

or over five years later), he could not remember whether Cesario Golez was present when he (witness) signed Exhibit G, or saw him signing thereon, although there was a possibility that Golez had witnessed it; that, for the same reason, he (witness) did not recall whether Golez had signed Exhibit G in his presence; and that he believed, however, that he had seen Golez in the house before and after he (witness) had signed Exhibit G.

Appellants deduce from the foregoing that Dr. Blancaflor "was not present when Cesario C. Golez signed Exhibit G and could not have seen Cesario C. Golez signing it for he left the house of Gumban and went home." This conclusion is, however, untenable.

Dr. Blancaflor did not say, or even intimate, how long, after signing Exhibit G, he paced the living room, before he left the house. Hence, Mr. Golez could have signed Exhibit G before the departure of Dr. Blancaflor. Indeed, Golez preceded Blancaflor in signing thereon, according to Gumban's testimony. At any rate, the failure of Dr. Blancaflor to remember with certainty whether or not he saw Golez signing the instrument, or whether Golez saw him sign thereon, does not prove that neither had seen the other affix his signature on Exhibit G, the witness having admitted that the opposite alternative is possible and that Golez was in the house of Gumban before and after the execution of Exhibit G. Moreover, Gumban and Golez testified positively that the testator signed at the foot of the will and on the left margin of each one of its pages, in the presence of the instrumental witnesses, including Dr. Blancaflor, and that these witnesses signed at the foot of the attestation clause and on the left margin of said pages, in the presence of the testator and of each other.

Needless to say, it is not essential to the validity of a will that each and every one of the witnesses should actually see each other sign thereon. In the language of the Supreme Court, it is enough that "existing conditions and the position of the parties with relation to each other were such that by merely casting their eyes in the proper direction, they could have seen each other sign" (Nera *vs.* Rimando, 18 Phil., 450), as in the case at bar.

In view of the foregoing, the alleged errors assigned in appellants' brief are without merit and the orders appealed from are hereby affirmed, with costs against the appellants. It is so ordered.

Dizon and *De Leon, JJ.*, concur.

Judgment affirmed.

[Nos. 3238–R–3239–R. January 9, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ROMEO GUANZON, ARMANDO GUSTILO, CESAR FONTANILLA, PEDRO REGALADO, and JOSE REGALADO, defendants and appellants. [1]

1. CRIMINAL LAW; LESS SERIOUS PHYSICAL INJURIES; CONSPIRACY; EVIDENCE; CONSPIRACY CAN BE INFERRED WITHOUT DIRECT PROOF. —The community of interest due to relationship, the absence of immediate and sufficient cause or provocation, the joint attack, and the obvious plan to deal separately with the complainants are facts and circumstances from which the unity of design that characterizes conspiracy can be inferred without need of direct proof (People *vs.* Carbonel, 48 Phil., 868; People *vs.* Cu Unjieng, 61 Phil., 236). While it may be true that some of the appellants were not aware of the details of the incident where Guanzon was bested by the Aranetas, it is not improbable that they were informed thereof shortly before the attack took place. "It is generally known that in family feuds, a member of the clan sometimes joins the others without actually knowing the details of the cause of the feud or enmity; all he knows and need know is that something must be avenged and that he is fighting a common enemy."

2. ID.; THREATS SUBSEQUENTLY COMMITTED BY ONE OF THE ASSAILANTS AGAINST A BROTHER OF THE ASSAULT VICTIM, WITHOUT PREVIOUS AGREEMENT OF ALL ACCUSED; EFFECT; CASE AT BAR.—The lower court erred in convicting the five appellants of the crime of grave threats. There is nothing to show that Armando Gustilo's act in blocking interference by Juan Araneta was previously agreed and determined upon by all the accused and was not a mere inspiration of the moment on the part of Gustilo. The fact that all of the accused concentrated their efforts at first on Jesus Araneta without detailing any member of their group to ward off any possible intervention on the part of their victim's brother reinforces the conclusion that Gustilo's stopping of Juan Araneta was a mere incident of the assault for which he should individually be deemed responsible.

3. ID.; ID.; THREATS NOT PUNISHABLE AS SEPARATE AND INDEPENDENT OFFENSE FROM THAT OF LESIONES IN CASE AT BAR.—But Gustilo's threat to shoot Juan Araneta should not be penalized as a separate and independent offense from that of lesiones inflicted on Jesus Araneta. The import of Gustilo's threat and his evident intention was to assure the consummation of the assault on Jesus by the other appellants, for the attack was still in progress and uncompleted when Juan Araneta's attempt to succor his brother was blocked. There is, therefore, a relation of means to end between the threat to Juan and the assault on Jesus, and the same motive impelled both acts.

4. ID.; ID.; ID.; BOTH ACTS SUBJECT TO ONE SINGLE PENALTY.—It makes no difference that the attack was already started when Juan Araneta was threatened; since it was still unfinished, the threats and assault formed one connected whole, with the threats constituting a necessary means to commit and carry the principal scheme to full fruition; and both acts are subject

[1] *See* Resolution of the Supreme Court of June 30, 1950. Appeal by certiorari was dismissed on the ground that the question raised are factual.

to one single penalty under article 48 of the Revised Penal Code. Ordinarily the means precede the principal crime, but not necessarily so. The robber who, after seizing the loot, finds the door blocked by a stranger and shoots at the latter, drives him away and makes good his escape, commits only the complex crime of robbery with discharge of firearms, and is subject to only one penalty (See Sent. of the Supreme Court of Spain of June 18, 1902, 68 Jur. Crim, p. 505; U. S. *vs.* Sol, 9 Phil., 268-269.)

5. ID.; ID.; ID.; ID.; SECOND ACT (THREATS), A "NECESSARY" MEANS TO THE COMMISSION OF THE FIRST; TERM "NECESSARY" AS USED BY THE CODE, CONSTRUED.—The threat to shoot Juan Araneta could have no meaning except in connection with the assault on his brother Jesus; and when the intervention of the Club Manager ended the aggression against Jesus, none of the appellants, not even Gustilo, evinced any desire to proceed further against Juan Araneta. From Gustilo's standpoint, the intervention of the latter endangered the success of the main scheme; by threatening and immobilizing Juan, he prevented frustration of the principal assault. The second act was, therefore, a necessary means to the commission of the first, by removing an obstacle not apparent at the start of the principal aggression. It should not be forgotten that, as pointed out by Groizard (Vol. II, p. 495), the term necessary is used by the Code in the sense of *direct* or *required* but not as *indispensable*; otherwise the two acts would constitute only one crime, not two.

6. ID.; ID.; ID.; ID.; ID.; ACT OF ONE CO-CONSPIRATOR, ACT OF ALL.—It is true that Gustilo had already wounded Jesus Araneta when he turned on Juan; but his companions were still continuing the assault, and being co-conspirators, their acts were legally those of Gustilo. The situation of the latter is clearly distinguishable from that of an accused who, after completing one crime commits another to conceal the first (as in U. S. *vs.* Remigio, 37 Phil., 199 and People *vs.* Bersabal, 48 Phil., 439), because then the second crime can not be viewed as a means to commit a prior one already consummated in full.

7. ID.; ID.; ID.; ID.; ID.; ID.; PROPER PENALTY APPLICABLE TO ACCUSED WHO COMMITTED GRAVE THREATS.—Pursuant to article 48, only the penalty for the more serious crime should be imposed on Gustilo in the maximum degree. But as threats uttered in the heat of anger in the course of a struggle or dispute is only considered a light threat, punishable with *arresto menor* and fine under par. 1 of article 285 of the Revised Penal Code (People *vs.* Padayhag, 36 Off. Gaz., 3265; U. S. *vs.* Paguirigan, 14 Phil., p. 450; Dec., Supreme Court of Spain, June 19 and August 24, 1878; October 4 and November 24, 1882; December 13, 1890; and February 20, 1891), while less serious physical injuries are punished with *arresto mayor*, the proper penalty applicable to Gustilo is that already imposed by the trial court in the other case, i.e., *arresto mayor* in its maximum degree, supposing that he could be convicted of the complex crime under the information filed in this case.

8. ID.; EVIDENCE; TYPE OF MEDICAL AND POLICE EVIDENCE NEEDED FOR THE REVIEW OF CRIMINAL CASES ON APPEAL.—The time seems ripe to call the attention of all concerned, trial judges, fiscals, defense attorneys and investigating officers, to the fact that the kind of medical testimony and post-mortem reports now in use are of little service to the ends of justice. What is important, and what the reviewing courts need, is not so much a description in technical language of the injuries involved, but a graphic

and correct representation of the location, sizes, directions, and inclinations of wounds or injuries involved, which may help the courts to infer the truth or untruth of the testimony on how such injuries were inflicted or came about. It is time, as expressed by Dr. Edmond Locard, Director of the Lyons Police Laboratory, "to replace verbal reports and descriptions, which are always something of a commentary, with the unmalleable testimony of photographs, plans, casts and measurements."

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Arellano, J.

The facts are stated in the opinion of the court.

Laurel, Sabido, Almario & Laurel for appellants.

Assistant Solicitor General Ruperto Kapunan, Jr. for appellee.

REYES, J. B. L., *J.:*

The accused Romeo Guanzon, Armando Gustilo, Balbino Guanzon, Cesar Fontanilla, Pedro Regalado, and Jose Regalado were charged in two separate informations in the Court of First Instance of Negros Occidental with the crimes of less serious physical injuries inflicted upon the complainant Jesus Araneta and grave threats to his brother Juan Araneta. The accused having pleaded not guilty, the cases were jointly tried.

The evidence submitted to the court below is aptly summarized by the trial court as follows:

"Como unos nueve dias antes del suceso de autos o, para ser mas exacto, el 8 de Mayo de 1948, un encuentro personal tuvo lugar entre el acusado Romeo Guanzon y el ofendido Johnny Araneta en los salones del juego de bolos (bowling alley) del University club, situado en la ciudad de Bacolod. Dicho encuentro personal culminó en un intercambio de puñetazos entre ambos, habiéndo salido malparado Romeo Guanzon, quién recibio golpes en el estomago y en el labio inferior que sangró, habiéndo, además, caido al suelo. Este incidente había sido presenciado por bastante público.

"Las pruebas demuestran que después de aquel encuentro personal en que estaban presentes Jesús Araneta por un lado, y Balbino Guanzon y Cesar Fontanilla, por otro, los dos hermanos Araneta, Johnny y Jesús, estrecharon las manos de los hermanos Guanzon, Romeo y Balbino, en señal de haberse hecho las paces; pero Romeo Guanzon no pudo abstenerse de expresar su resentimiento y disgusto en estos o parecidos términos: "Que vale todo esto si ya he sido dañado?", después de lo cual ambas partes se separaron.

"Vino el 17 de Mayo. El sitio donde tuvo lugar el presente caso de autos fueron los mismos salones del University Club. El primero en llegar alli fué Balbino Guanzon, como a la 1:00 de la tarde. Vinieron mas tarde como a la 1:30 Armando Gustilo y José Regalado, y los tres se pusieron a jugar al "dominó" en una de las mesas que se hallaban hacia uno de los angulos de lado suroeste de los salones del Club. Un poco mas tarde, llegó Romeo Guanzon y se unió al grupo de los tres que jugaban al "dominó". Mientras jugaban los cuatro, como a las 2:30 de la tarde, llegó Cesar Fontanilla, pero éste pudo tomar parte en el juego de "dominó" cuando Balbino se hubo levantado para jugar la "manilla" en la mesa contigua

de un metro de distancia de la primera. La "manilla" se jugaban al principio entre Emilio Blanco, Dionisio Gonzaga y Ernesto Gonzaga, uniéndose mas tarde de Balbino Guanzon. Al poco rato, llegó Pedro Regalado con un grupo de compañeros compuesto de Jesus de Oca, Ermelo Gonzaga y Reynaldo Vargas. Pedro Regalado se unió con los que jugaban el "dominó" pero no jugó.

"Mientras se desarrollaba la partida de "dominó" entre los acusados, y como a las 5:30 de la tarde, llegaron Johnny Araneta y Jesus Araneta acompañados por sus primos Rodolfo Gustilo, Gregorio Gustilo, y Rafael Salas, y como el propósito de éstos era jugar a los bolos (bowling), procedieron directamente al salon de este juego que está al extremo opuesto de las mesas donde se jugaban al "dominó" y a la "manilla". Según el resultado de la inspección ocular hecha por el Juzgado, desde cualquiera de las mesas donde se jugaban estos dos ultimos juegos de salón (el "dominó" y la "manilla"), se domina perfectamente la amplitud de los salones del Club incluyendo el lugar de juego de bolos, de tal manera que el que estuviese sentado en cualquiera de dichas mesas podria ver sin dificultad la concurrencia en el salon del juego de bolos y vice-versa. También, desde cualquiera de dichas mesas del juego de "manilla" y "domino", se domina la puerte de entrada a los salones del club, de modo que el que estuviese sentado en cualquiera de dichas mesas, puede facil y perfectamente ver a cualquiera que entrase por la puerta del Club.

"Indudablemente los acusados vieron a los hermanos Johnny y Jesus Araneta cuando éstos entraron. Estos, habiéndo encontrado que los salones del juego de bolos estaban ocupados y que no podían jugar, esperaron. Johnny Araneta, Pompeyo Querubin, Gregorio Gustilo, y Jesús Araneta tomaron asiento sobre la balaustrada o barandilla del juego de bolos con la cara mirando hacia el juego de bolos y las espaldas dándo a los salones propiamente del Club. En otras palabras, en la posición en que se encontraban sentados sobre la barandilla o balaustrada del juego de bolos, éllos también daban las espaldas a los que jugaban la "manilla" y al "dominó", mientras que Rodolfo Gustilo y Rafael Salas, se habían sentado en los asientos de la galería del juego de bolos.

"Repentinamente, los acusados, Pedro Regalado, José Regalado, Cesar Fontanilla, Romeo Guanzon, y Armando Gustilo, se levantaron de sus asientos y dejando la mesa donde jugaban al "dominó", encabezados por los dos últimos, avanzaron hacia donde estaba Jesús Araneta. Armando Gustilo iba armado de un revolver de calibre .45, Exhíbito A, y cuando hubieron llegado cerca y detras de Jesús Araneta, Romeo Guanzon puso la mano sobre la pechera de la camisa de aquél agarrándola y atrayéndole con fuerza, obligando a Jesús a volver la cara. Acto continuo Romeo le infligió un puñetazo que le tocó cerca del ojo izquierdo, y casi simultaneamente, Armando Gustilo, tambíen desde detras, le descargó dos golpes con su revolver tocándole: uno, en la parte posterior de la cabeza, y otro, en el parietal derecho. Sorprendido Jesús por estos golpes, dió media vuelta sobre la barandilla saltándo inmediatamente de la misma, pero apenas habia hecho esto, Armando Gustilo le descargó otro golpe con su revolver que vino a parar en la base del cuello, lado izquierdo. Acto seguido, los otros acusados, Pedro Regalado, José Regalado, y Cesar Fontanilla, se unieron a los dos primeros y acometieron a puñetazos y manotadas a Jesús. Cuando Johnny Araneta se dió cuenta de lo que pasaba, porque oyó el ruido de los golpes descargados contra su hermano por Armando bajó inmediatamente de la balaustrada y avanzó hacia su hermano Jesús con el proposito de ayudarle a éste, pero Armando Gustilo, le apuntó a Johnny con su revolver y

amenazándole con pegarle un tiro, le dijo, 'dont' move or I will shoot you.'

"Ante esta amenaza, Johnny primero vaciló y más tarde tuvo que parar por miedo al revolver. Mientras tanto, los cuatro acusados, Romeo Guanzon, Cesar Fontanilla, Pedro Regalado y José Regalado, continuaron agrediéndole a Jesús, quien, completamente solo y a merced de los acusados, tuvo que defenderse como podía. Mientras tanto, el acusado Armando Gustilo continuaba apuntándo con su revolver a Johnny Araneta, impidiéndole de este modo a éste que ayudara a su hermano. Ninguno del público ni de los amigos que acompañaban a los hermanos Araneta, pudieron intervenir en vista de la actitud decidida de Armando. Al poco rato, vino Emilio Blanco, Manager del Club quien consiguio parar y separar los victimas de los victimarios.

"Resulta que mientras ocurría la agresión, Rodolfo Gustilo encontró oportunidad para escabullirse y se dirigió a la estación de la policia de la Ciudad de Bacolod, donde dió cuenta de lo que los pasaba a sus primos Johnny y Jesús Araneta, y pidío de las autoridades policiacas el auxilio correspondiente. Cuatro policias, uno de ellos Crescenciano Bayona, acudieron al Club, acompañados por el referido Rodolfo Gustilo. Cuando llegaron a la puerta de entrada, encontraron a Jesús Araneta con la camisa desgarrada y hecha pedazos y con manchas de sangre y con la cabeza sangrándo. Este dió cuenta a los policias de lo que le habían hecho los acusados indicando a los agentes del orden que el acusado Armando Gustilo le había golpeado con su revolver en la cabeza. Entonces, los policias acompañados por Jesús, entraron en el Club donde encontraron a los acusados reunidos en una de las mesas cerca del corredor. A indicación de Jesús, el policia Crescenciano Bayona se acercó a Armando Gustilo y le ordeno a éste que la rindiera el revolver, a lo que Armando voluntariamente hizo entrega del arma, Exhíbito A. Dicho revolver estaba cargado con ocho balas, siete de las cuales estaban en el "magazine" y una en la cámara (chamber). Cuando el policia recibió el revolver tenia el gatillo completamente levantado. Acto seguido, los policias llevaron a todos los acusados en la estación de policia diciéndo a los hermanos Araneta, Johnny y Jesús, que fueran también con éllos. Mientras saían por el corredor del Club, Jesús los retó a los acusados a una pelea mano a mano, pero Romero Guanzon le contesto en estos parecidos términos: "Para qué pelear, si ya nos hemos vengado."

"Jesús Araneta, de resultas de la agresión tuvo las siguientes lesiones:

"Wounds, contused, sutured, 1 in. scalp, 1 cm. parietal, rt. & occipit.

"Contusion with haematoma, lower lid, left and cheek, rt.

"Abrasion, temple, rt.

"Abrasions, multiple, (5) back.

"Contusion, interscapular, left.

"Abrasions, multiple, chest, opignastrium and neck, rt.

"Contusion, neck, rt.

"En la misma tarde, Jesus fué conducido a la clínica del Dr. Parreño, donde éste le administro la primera cura y suturó las dos heridas en la cabeza, y poco después fué llevado al hospital provincial donde estuvo confinado por trece dias hasta la completa curación de las heridas. Jesús Araneta pagó al Dr. Parreño por sus servicios profesionales ₱200 (Exhíbito F), y al hospital provincial ₱249.80 (Exhíbito E–5), o sea un total de ₱449.80.

"La defensa ha dado una versión diferente del suceso, y es la siguiente: Admite haber tenido lugar el incidente del 8 de Mayo, el cual es el origen del caso de autos y añade que habiéndose hecho las paces, dicho incidente había sido olvidado por los

acusados; que el 17 de dicho mes de Mayo, los acusados Armando Gustilo, Romeo Guanzon, José Regalado y Cesar Fontanilla estuvieron jugado al "dominó" en una de las mesas situadas hacia la parte suroeste de los salones del University Club; que el acusado Balbino Guanzon también habia tomado parte al principio en el juego de domino, pero para dar sitio a Cesar Fontanilla, se levantó del juego y fué a la mesa contigua para jugar a la "manilla"; que como a las 5:30 llegaron Pedro Regalado y los compañeros de éste, Jesús de Oca, Ermelo Gonzaga y Reynaldo Vargas; que durante el juego de "dominó", Armando Gustilo propuso é invito a sus coacusados que jugaran a los bolos (bowling) y acto seguido, él y Cesar Fontanilla se levantaron para ir al salon del juego de bolos, mientras que Romeo Guanzon y José Regalado se quedaron aún para arreglar el pago de la "mesada" del juego de "dominó" y las bebidas que habían tomado; que Armando Gustilo tuvo que ir primero al retrete y cuando hubo salido de él, los dos Cesar Fontanilla y él procedieron hacia el salón de bolos; que una vez alli, fueron a ver el "score board" fijado en el tabique junto a la galería, después de lo cual depositó su revolver en poder de Eusebio Lopez que a la sazón se hallaba en la galería; que no pudieron jugar porque el salón de bolos estaba ocupado, y pasaron al salón de billar, contiguo al primero, donde tampoco pudieron jugar porque también las mesas de billar estaban ocupadas; que los dos tomaron asiento sobre la balaustrada del salón de billar; que Romeo Guanzon al dirigirse hacia el juego de bolos y mientras se acercaba al lugar de dicho juego, observó que Jesús Araneta le dirigía miradas hostiles, por cuyo motivo se le acercó a Jesús preguntándole el motivo de su actitud; que Jesús Araneta le contestó con una provocación retándole a una pelea, y que sin esperar contestación, le largó un puñetazo tocándole a Romeo en la mejilla izquierda; que debido a esto los dos se enzarzaron en una lucha, primero a puñetazos y luego cuerpo a cuerpo; que durante esta lucha, ambos llegaron cerca del escenario del Club; que durante la lucha Jesús cayó boca arriba chocándo con fuerza su cabeza contra la barandilla del escenario; que en esto, Johnny trató de avalanzarse en ayuda de su hermano, a lo cual Armando Gustilo se interpuso y le dijo, "Dejarles a los dos y que nadie vaya a su ayuda"; que debido a esto y por miedo quizá a los compañeros que acompañaban a Armando, Johnny desistió de su propósito de ayudar a su hermano; que después de la caida de Jesús, éste y Romeo continuaron luchándo cuerpo a cuerpo hasta que apareció Emilio Blanco que separó a los dos combatientes. Entonces el grupo de los acusados se dirigieron hacia un rincón del salón alrededor de una mesa y cerca de la puerta del Club que dá el corredor; que al poco rato llegaron cuatro policias siendo uno de éllos Cresenciano Bayona; que éste se acercó al grupo de los acusados y preguntó a Romeo quién tenía revolver, habiéndole contestado éste que el no tenía revolver; que acto seguido, Armando intervino diciéndo que él tenía revolver; que cuando el policia le pidió el arma, Armando Gustilo de contestó, "Por que?" y que el policía le replicó: "Dámelo solamente, que ya despues lo arreglarémos"; que entonces Armando se levantó y se dirigió acompañado por el policia hacia la escalinata del escenario donde a la sazón se encontraba Eusebio Lopez; que Armando le pidió a éste la entrega del revolver Exhíbito A, cuyo revolver es de la propiedad con previa licencia de dicho Armando; que una vez recibido el revolver, Armando se lo entregó al policía; que acto seguido, los policías condujeron acusados y ofendidos a la estación; que mientras salían de los salones del Club y en el corredor del mismo, Jesús Araneta retó a Romeo Guanzon a una pelea, a lo que éste contestó diciendo: 'Como vamos a pelear, estándo en manos de las autoridades?' (Sentencia, pp. 74–84, Appellants' Brief.)

After analyzing the proofs the lower court acquitted the defendant Balbino Guanzon from both charges because of reasonable doubt; but convicted his five co-defendants of the crimes charged in the two informations as co-conspirators who must individually answer for the acts of each and everyone. In criminal case No. 1782 defendants Romeo Guanzon, Armando Gustilo, Cesar Fontanilla, Pedro Regalado and Jose Regalado were each sentenced to suffer six (6) months of *arresto mayor*, to indemnify the offended party in the sum of ₱449.80, and to pay 5/6 of the costs. In criminal case No. 1783, for grave threats, each was sentenced to six (6) months of *arresto mayor*, to pay a fine of ₱500, and to pay 5/6 of the costs.

From these decisions the five accused who were convicted appealed to this court.

The crucial question posed in this appeal is the manner in which Jesús Araneta received his head injuries. Against the version of the prosecution witnesses that Jesús was thrice hit by Armando Gustilo with the butt of his .45 caliber automatic pistol, Exhibit A, causing two distinct wounds that split the scalp to the bone, besides a contusion in the neck, the defense witnesses assert that in the course of a man-to-man struggle with Romero Guanzon, Jesús lost his balance, and his head hit the railings of the bandstand of the University Club hall (shown in Exhibit 1),—

> "such that the back or occipital part of the head hit the sharp edged perpendicular projection of the bandstand railings, and his right parietal part of the head hit the sharp edged horizontal wooden railings of the same bandstand." (Appellants' Brief, p. 15.)

The artificiality of the defense version is manifested by its conflict with the physical facts. If the two gashes were caused by the right angled edges of the bandstand railings, as claimed by the defense, then the longer axes of the two wounds should have run along the same general directions, as if one were a prolongation of the other, save for the solution of continuity. Instead, both appear *almost vertical* and *parallel to each other*. Thus, the course of the ocular inspection of the premises, the trial court described the scars shown on the head of Jesús Araneta as having an inclination of 45 and 40 degrees from the vertical (Transcript. pp. 452 and 453, Jalandoon); leading the trial judge to remark in his decision that—

> "las cicatrices que las heridas dejaron son cada una de linea oblicua, aproximadamente vertical, lo cual desvirtua claramente la pretensión de la defensa." (Decision, p. 11).

Despite the well known adage that "a picture is worth ten thousand words," the defense filed no diagram or picture of the scars in complainant's head to show their correspondence with the railing edges that allegedly caused the

injury. The necessity of showing such agreement is so obvious that the omission of the defense becomes significant. Its acquiescence to the description of the trial court imports the destruction of its elaborate theory.

Then again, the court described the wound in the parietal region as "linea igualmente oblicua, *pero encorvada,* de unos 40° de la linea vertical." If this wound was caused by the horizontal straight edge of the railing, why should the resulting wound be *curved?*

Finally, since the two wounds were caused by a single fall, "with Jesus' hands holding on Attorney Guanzon" (appellants' brief, p. 14, it is unlikely that both should have the same depth. The fall being in one direction only, one of the two edges, either the vertical or the horizontal, would cause a glancing blow. Instead, both reached the bone (Exhibit I).

The foregoing circumstances taken together, convince us that the court below was not in error in holding in the decision appealed from—

> "que las mencionadas dos heridas fueron causadas por los golpes inferidos con la culata del revolver Exh. A, pues la forma y posicion de sus cicatrices coinciden con el borde lateral de la culata del arma."

The last finding quoted is conclusive and binding upon this court, since neither prosecution nor defense found it expedient to help our review by producing a faithful representation (photograph or chart) of the scars of the wounds in question. The time seems ripe to call the attention of all concerned, trial judges, fiscals, defense attorneys and investigating officers, to the fact that the kind of medical testimony and postmortem reports now in use are of little service to the ends of justice. What is important, and what the reviewing courts need, is not so much a description in technical language of the injuries involved, but a graphic and correct representation of the location, sizes, directions, and inclinations of wounds or injuries involved, which may help the courts to infer the truth or untruth of the testimony on how such injuries were inflicted or came about. It does not seem to be very difficult to trace a human figure from some textbook of anatomy and represent thereon the injuries found by the medical examiner, even assuming that photographic representations can not be procured despite the profusion of professional photographers throughout the Islands. It is recalled that several years ago the Solicitor General recommended to the Department of Justice the preparation and distribution of medical report forms bearing printed representations of the human anatomy, to facilitate marking the injuries thereon, as is done in reporting lesions covered by the Workmen's Compensation Act. No action

seems to have been taken on the suggestion, and it is highly desirable that before the coming of the millennium the task of the courts be made to some extent surer and less blind with the aid such diagrams or charts. It is time, as expressed by Dr. Edmond Locard, Director of the Lyons Police Laboratory, "to replace verbal reports and descriptions, which are always something of a commentary, with the unmalleable testimony of photographs, plans, casts and measurements."

The unreliability of the defense version on the decisive points necessarily infirms the remainder of its evidence, and leaves that of the prosecution practically uncontradicted. The allegation that Armando Gustilo delivered his pistol to Eusebio Lopez before the fracas is also discredited by the absence of any reasonable motive to do so. It could not have been due to the mere desire to play bowling, for the evidence shows that the alleys were then all occupied. As appellant Gustilo could not play, the entrusting of the pistol to Lopez was unwarranted; and if the delivery was made by way of precaution against accidental loss, the natural thing to do would have been to surrender the weapon to the club authorities, the manager being seated at a table close by. Moreover, we have the testimony of policeman Bayona that the pistol was surrendered by Gustilo himself, who pulled it from his waist band, contradicting the defense witnesses' testimony to the effect that appellant asked Lopez for it. The failure to present other policemen to support Bayona is by itself no argument against his veracity or impartiality, especially since Bayona stands already corroborated by the Aranetas and Pompeyo Querubin on the surrender of the pistol by Gustilo.

The defense brands the narration of events by the prosecution witnesses as improbable and incredible and hence insufficient to establish guilt beyond reasonable doubt; but on close analysis its objections are shown to be without basis. There is nothing incredible in Gustilo's blows having landed on the right and back of Jesús Araneta's head if, as testified to, they were delivered from behind while appellant Romeo Guanzon struck at the face of Jesús. With the latter turned toward Guanzon, Gustilo's blows, *struck from behind,* would have a natural tendency to land on the back and right side of the victim's head, unless Gustilo were left-handed, which is not at all proved. Neither was it physically impossible for him to hit Jesús on the head, even if that were on a higher level than Gustilo's own; for the blows were delivered with a circular motion of a raised arm, which would overtop the complainant.

It is argued that one intending to club another with the butt of a pistol would naturally grasp the weapon by the barrel, instead of holding it by the handle. That might

be true if the aggressor did not anticipate any need to shoot; but if he bore in mind the possibility of retaliation either by the victim or his companions (and it is not to be forgotten that Jesús Araneta's athletic brother, Juan, was close by when the attack occurred), the aggressor would naturally prefer to hold the pistol in the ordinary way so as to be able to fire without loss of time in case of need. The danger would lie in the gun exploding when the butt of the cocked pistol struck the head of the victim; but that accident can be forestalled by pushing up the safety catch with a flick of the right thumb, a precaution in all probability taken in this case. Experiment with the pistol (Exhibit A) shows that it can be done easily and imperceptibly, provided the hammer is *fully cocked,* as the witnesses for the prosecution saw that it was when wielded by Gustilo; for the safety catch does not operate if the hammer is not cocked.

That the appellants herein collectively assaulted Jesús Araneta causing him several wounds and contusions, is clear upon the record, in view of the positive testimony of the witnesses for the prosecution. The individual denials of the appellants can not override that proof, not only because of the established superiority of positive over negative evidence, but also because the testimony of the defendants is inextricably linked with their endeavor to prove that Araneta was injured by a fall in the course of a man-to-man struggle with Romeo Guanzon, an account that is improbable and unworthy of credence.

That Restituto Espejo and Gregorio Gustilo should have stated that the Club manager, Mr. Blanco, separated Jesús Araneta from Romeo Guanzon, conformably to Blanco's own version and that of the witnesses of the defense on this particular aspect of the incident, does not prove that the appellants did not begin with a collective attack upon Jesús Araneta, but only that, when Blanco intervened toward the end of the fight, the struggle had practically degenerated into a duel between Guanzon and Jesús. This is a natural development, considering the personal animosity of Guanzon, due to the incident between him and the Araneta brothers in the afternoon of May 9, 1948, when the latter manhandled and knocked down the appellant Romeo Guanzon in the bowling alley of the club, in the presence of other persons. And in its endeavor to minimize this humiliating incident which the lower court, in our opinion, correctly viewed as the source of appellants' resentment, the defense overemphasizes the handshaking between Guanzon and Jesús after the manhandling. Having been overpowered and twice felled by the Aranetas, Guanzon had no choice but to accept the handshake offered by his victors; but it is naive and contrary to experience to assume that such ceremony could instantly wipe out

Guanzon's natural resentment at the cavalier treatment to which he had been subjected in public. History shows that with individuals, as well as with nations, a forced peace ultimately proves to be neither genuine nor lasting.

Was the joint assault of the appellants the result of a conspiracy to injure Jesús Araneta? In our opinion the lower court correctly held the affirmative. Conceding that simultaneity of aggression is not by itself sufficient to prove conspiracy but that there must be identity of purpose in the aggressors, the circumstances disclosed by the record meet this requirement. The defendants, who were at first grouped around one of the tables of the social hall of the University Club, left that place in a body and proceeded directly to where Jesús Araneta was seated on the railings of the bowling alley watching the players, simultaneously attacked him, and maintained the attack until the intervention of the Club authorities and the police ended the struggle. That this assault was according to plan is shown by the fact that although the two Araneta brothers, Juan and Jesús, were present, and both were responsible for the incident of May 9, the accused concentrated their efforts against Jesús alone, in a plain endeavor to isolate and deal separately with him, so that the numerical superiority of the appellants would count to the utmost. There had been no previous provocation or dispute between the Aranetas and the appellants on that day to warrant any such concerted action on their part against the former; so that the only remaining motive for their cooperation is the desire and intent to avenge the injury done to their relative, Romeo Guanzon, in the preceding week. The community of interest due to relationship, the absence of immediate and sufficient cause or provocation, the joint attack, and the obvious plan to deal separately with the complainants are facts and circumstances from which the unity of design that characterizes conspiracy can be inferred without need of direct proof (People *vs.* Carbonel, 48 Phil., 868; People *vs.* Cu Unjieng, 61 Phil., 236). While it may be true that some of the appellants were not aware of the details of the incident where Guanzon was bested by the Aranetas, it is not improbable that they were informed thereof shortly before the attack took place. As remarked by the Solicitor General, "it is generally known that in family feuds, a member of the clan sometimes joins the others without actually knowing the details of the cause of the feud or enmity; all he knows and need know is that something must be avenged and that he is fighting a common enemy."

The assertions of Romeo Guanzon that he attacked Jesús Araneta because the latter directed hostile glances at him shortly before the incident, and when he approached to demand an explanation, Jesús challenged him to a fight

and gave him a blow, are discredited by the common-sense observation made by the trial court that since Guanzon had been the one worsted in the May 9th incident, it is improbable that Jesús should have harbored resentment against him, as Jesús would have no reason to provoke Romeo Guanzon after the latter had been humbled in public a week before. On the other hand, Guanzon, smarting under that same humiliation, had every reason to seek revenge and in this desire he was obviously abetted and helped by his relative and co-defendants.

That the crime was aggravated by either treachery or superior strength is shown by the tactics adopted by appellants. Their sudden concentration on Jesús, disregarding his brother, though the latter was present and equally responsible for the injury to Romeo Guanzon's pride, could have no other motivation than the desire to overwhelm Jesús Araneta and dispose of him quickly and without danger to themselves.

While some of the witnesses (for the prosecution as well as for the defense) did exhibit noticeable bias for one or the other side, apparently due to close relationship and association with the protagonists, bias by itself does not warrant disregard of such part of their testimony as is corroborated and not in contravention of the physical facts or those circumstances that are undisputed. In this regard, the estimate in favor of the prosecution, made by the trial court, who had the best opportunities to gauge the credibility of the witnesses, is ordinarily preeminent; and because of the inherent improbability of the main aspects of the defense version, we do not feel justified in departing from his estimate of the veracity of the principal witnesses. While local politics may conceivably have played some role in the acerbity of counsel for either side, it does not appear to have affected the case of the defendants-appellants to their prejudice. The acquittal of Balbino Guanzon, the brother of Romeo, due to reasonable doubt as to his participation, constitutes proof that the trial court's consideration of the evidence was not warped by prejudice or partiality.

With reference to the conviction of all the appellants for the threat uttered by Armando Gustilo to Juan Araneta, warning the latter not to intervene in the struggle between Jesús and the other accused or else he would be shot, we agree with the defense and the Solicitor General that the lower court erred in convicting the accused of the crime of grave threats. There is nothing to show that Armando Gustilo's act in blocking interference by Juan Araneta was previously agreed and determined upon by all the accused and was not a mere inspiration of the moment on the part of Gustilo. The fact that all of the accused concentrated their efforts at first on Jesús Araneta without detailing any member of their group to ward off any

possible intervention on the part of their victim's brother reinforces the conclusion that Gustilo's stopping of Juan Araneta was a mere incident of the assault for which he should individually be deemed responsible.

But we differ from the government counsel on his view that Gustilo's threat to shoot Juan Araneta should be penalized as a separate and independent offense from that of lesions inflicted on Jesús Araneta. The import of Gustilo's threat and his evident intention was to assure the consummation of the assault on Jesús by the other appellants, for the attack was still in progress and uncompleted when Juan Araneta's attempt to succor his brother was blocked. There is, therefore, a relation of means to end between the threat to Juan and the assault on Jesús, and the same motive impelled both acts.

It makes no difference that the attack was already started when Juan Araneta was threatened; since it was still unfinished, the threats and asssault formed one connected whole, with the threats constituting a necessary means to commit and carry the principal scheme to full fruition; and both acts are subject to one single penalty under article 48 of the Revised Penal Code. Ordinarily the means preceded the principal crime, but not necessarily so. The robber who, after seizing the loot, finds the door blocked by a stranger and shoots at the latter, drives him away and makes good his escape, commits only the complex crime of robbery with discharge of firearms, and is subject to only one penalty (See Sent. of the Supreme Court of Spain of June 18, 1902, 68 Jur. Crim., p. 505). And in U. S. *vs.* Sol, 9 Phil., 268–269, it was held:

> "It should be noticed for the legal effects thereof, that the sequestration of nearly half an hour of the dwellers of the house when the robbers compelled them to leave it and follow them up to a certain distance, undoubtedly for no other purpose than to prevent their reporting the matter to the authorities while the robbers were near the place where the robbery was committed, can not be qualified as the crime of illegal detention, but as an act of restraint generally resorted to by robbers in order to delay or prevent assistance being rendered by the authorities; therefore, the court, following its constant opinion in matters of this kind, considers that said act does not constitute the crime of illegal detention, for the reason that the conditions which are inherent to such crimes against the liberty of persons are not present in this case."

The threat to shoot Juan Araneta could have no meaning except in connection with the assault on his brother Jesús; and when the intervention of Blanco ended the aggression against Jesús, none of the appellants, not even Gustilo, evinced any desire to proceed further against Juan Araneta. From Gustilo's standpoint, the intervention of the latter endangered the success of the main scheme; by threatening and immobilizing Juan, he prevented frustra-

tion of the principal assault. The second act was, therefore, a necessary means to the commission of the first, by removing an obstacle not apparent at the start of the principal aggression. It should not be forgotten that, as pointed out by Groizard (Vol. II, p. 495), the term *necessary* is used by the Code in the sense of *direct* or *required* but not as *indispensable;* otherwise the two acts would constitute only one crime, not two.

It is true that Gustilo had already wounded Jesús Araneta when he turned on Juan; but his companions were still continuing the assault, and being co-conspirators, their acts were legally those of Gustilo. The situation of the latter is clearly distinguishable from that of an accused who, after completing one crime, commits another to conceal the first (as in U. S. *vs.* Remigio, 37 Phil., 199 and Peo. *vs.* Bersabal, 48 Phil., 439), because then the second crime can not be viewed as a means to commit a prior one already consumated in full.

Pursuant to article 48, only the penalty for the more serious crime should be imposed on Gustilo in the maximum degree. But as threats uttered in the heat of anger in the course of a struggle or dispute is only considered a light threat, punishable with *arresto menor* and fine under paragraph 1 of article 285 of the Revised Penal Code (Peo. *vs.* Padayhag, 36 Off. Gaz., p. 3265; U. S. *vs.* Paguirigan, 14 Phil., p. 450; Dec., Supreme Court of Spain, June 19 and August 24, 1878; October 4 and November 24, 1882; December 13, 1890; and February 20, 1891), while less serious physical injuries are punished with *arresto mayor,* the proper penalty applicable to Gustilo is that already imposed by the trial court in the other case, i.e., *arresto mayor* in its maximum degree, supposing that he could be convicted of the complex crime under the information filed in this case.

In view of all the foregoing, the judgment of the lower court convicting all of the accused-appellants of the crime of less serious physical injuries aggravated by *alevosia* in criminal case No. 1782 is affirmed, the penalty of six months' imprisonment imposed by the lower court being in accordance with law; but the decision in criminal case No. 1783 is reversed, and all the appellants are absolved and acquitted from that charge. All five appellants, however, shall be jointly and severally liable for the payment of the indemnity of ₱449.80 due to Jesús Araneta by way of damages for the injuries caused him, with subsidiary imprisonment in case of insolvency. Costs in this instance to be paid by the accused-appellants.

Gutierrez David and *Ocampo, JJ.,* concur.

Judgment modified.

[No. 3404–R. January 9, 1950]

FELICIANO PATERNO, plaintiff and appellee, *vs.* MELECIO CASTAÑOS, defendant and appellant

1. LEASE; HOUSE RENTAL LAW; PREMISES OF COMMERCIAL NATURE, NOT WITHIN PURVIEW OF THE LAW.—When the premises involved is commercial, the same does not come within the purview of the emergency legislation on housing, and the lease thereof, being on a month-to-month basis, ceases without the necessity of special notice upon the expiration of the term, according to art. 1581 of the Civil Code, and "the owner of the land leased has the right not only to terminate the lease at the expiration of the term, but to demand a new rate of rent. (Cortes *vs.* Ramos, 46 Phil., 184.)

2. COURTS; INHERENT POWER OF COURTS; REVOCATION OF PROMULGATED DECISION BY JUDGE, WHEN PROPER.—If under such inherent power of the courts, a judge of first instance can legally revoke an order of another judge in the very litigation subsequently assigned to him for judicial action, with more reason he can revoke or reverse his own order or decision, even already promulgated, so as to make it conformable to law and justice, provided that he does so, as was done in this case, before he losses jurisdiction of the case, that is, before the time to appeal has expired.

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

Leon O. Ty for appellant.
Jose Sotelo Matti for appellee.

DE LEON, *J.:*

This is an ejectment suit originally instituted in the Municipal Court of the City of Manila by the plaintiff and appellee against the defendant and appellant, whereby the former seeks to oust the latter from the premises situated at 826 R. Hidalgo, Quiapo, occupied by him, under a verbal contract of lease, on a month-to-month basis, or to continue occupying the same, provided he would pay a monthly rental of ₱300, beginning January 1, 1948. It is also alleged in the complaint that the City Assessor has increased the assessed value of the property and that same is a commercial place, as defendant and appellant is running a first-class barber shop in it. Judgment was rendered by the municipal court, ordering the defendant and appellant to vacate the said premises and to pay a monthly rental of ₱150 from January 1, 1948, until he leaves the premises. Defendant and appellant appealed to the Court of First Instance of Manila presided over by Judge Amparo. On June 28, 1948, Judge Amparo rendered a decision dismissing the complaint but ordering the appellant to pay the back rents at the rate of ₱150 from January 1, 1948. In said decision, the trial judge held that the lease of the

premises in question, being used by defendant principally as a dwelling and incidentally for business, is regulated by the House Rental Law (Commonwealth Act No. 689 as amended by Republic Act No. 66 and Executive Order No. 62, and consequently because the monthly rent of ₱300 demanded by plaintiff and appellee is unjust and unreasonable, being in excess of the limit fixed by law, ejectment will not lie.

On July 8, 1948, that is before the said decision of June 28, 1948 had become final and executory, Judge Amparo *motu propio* set aside his aforesaid decision of June 28, 1948 and rendered a new one, dated July 8, 1948, which, because of its conciseness and clarity, is hereby quoted *in toto:*

"This is an ejectment case which originated in the Municipal Court, wherein a judgment was rendered in favor of the plaintiff and against the defendant ordering the latter to vacate the premises located at No. 826 R. Hidalgo street, Quiapo, Manila, and to pay to the plaintiff a monthly rental in the sum of ₱150 from January 1, 1948, until he leaves the premises.

"The plaintiff is the owner of an apartment at No. 826 R. Hidalgo, Quiapo, Manila. In May, 1945, he leased the place to the defendant, Melecio Castaños for ₱100 per month, that is to say, on a month to month basis. In March, 1946, he raised the rent to ₱150 per month, and the defendant paid the rent up to and including the month of December, 1947. On December 5, 1947, the plaintiff wrote a letter to the defendant (Exhibit A) raising the rent to ₱300 a month effective January 1, 1948, payable in advance within the first five days of the corresponding month, adding that if the defendant was not agreeable to the new rate, he should move out from the premises. The defendant refused to pay the increased rent, as a result of which an ejectment suit was filed against him in the municipal court as above stated.

The contention of the plaintiff is that the place where the apartment is situated is in the commercial section of the city; that the defendant has a barber shop in the place, ranking with the first class barber shops of the city, and that by reason of said barber shop the apartment is used principally for business and secondarily for residence of the defendant and his family. On the other hand the contention of the defendant is that the apartment is located in a residential section of the city and is used primarily as his residence and that of his family, and secondarily for his barber shop business in the front part of the ground floor of said apartment.

There is no dispute that the upper story of the apartment is used as dwelling of the defendant and his family, and that on the ground floor there is a barber shop owned by the defendant in which he employs six barbers. The establishment of the said barber shop in the ground floor of the apartment has converted the building into a commercial place devoted to business pursuit. The defendant is not a barber, but works as an employee of the Philippines Free Press. He invested his money in the barber shop business and therein he employs six men to work for him and with whom he shares the income from the barber shop. In the cases of Edilberto Morales *vs.* Melecio Zamora, G. R. Nos. L-1433-34-35, the question whether a place partly used as dwelling by the tenant and at the same time as a barber shop wherein he employs six barbers, is a dwelling place as this term is used in Commonwealth Act No. 689, as amended by

Republic Act No. 66 and Executive Order No. 62, has been squarely raised and decided. The Supreme Court in its decision promulgated on June 30, 1948, held that the place is a commercial establishment devoted to business pursuit and does not come within the provisions of the emergency legislation on house rents. Says the Supreme Court:

"'On this question we note that the Court of Appeals found the place devoted to the business of a barber shop. The respondent states without contradiction that petitioner's establishment has six chairs (barbers) and employs a number of hair-cutters who do not belong to his family. Wherefore, under the circumstances we do not believe that herein petitioner may successfully plead the maintenance of a 'home industry,' as distinguished from a business establishment. When a barber or tailor pursues his calling merely by serving customers in his dwelling, he is merely exercising a home industry and his place of abode does not thereby become commercial. But when he engages other tailors or barbers to expand his business and increase his returns, his establishment becomes commercial, and the incidental fact that his family lives therein would not include him in that class of tenants especially favored by recent emergency legislation on housing.' (Morales *vs.* Zamora, G. R. Nos. L-1433-1435, June 30, 1948.)

Upon the authority of the said decision of the Supreme Court, judgment is hereby rendered in favor of the plaintiff and against the defendant, and the latter is hereby ordered to vacate the premises and to pay the back rents at the rate of ₱150 per month from January 1, 1948, until the premises are restored to the possession of the plaintiff. With costs against the defendant.

So ordered.

Manila, Philippines, July 8, 1948.

RAFAEL AMPARO
Judge"

Against the latter judgment, defendant and appellant appealed to this court, assigning the following errors:

I. The trial court erred in holding that the instant case does not fall within the provisions of Commonwealth Act No. 689 as amended by Republic Act No. 66 and Executive Order No. 62.

II. The trial court erred in not holding that the apartment leased to the appellant is being used "other than principally for a commercial or industrial purposes."

III. The trial court erred in holding that the establishment of the barber shop on the ground floor of the apartment has converted the building into a commercial place devoted to business pursuit.

IV. The trial court erred in *motu propio* setting aside its decision of June 28, 1948 and rendering this new decision appealed from, dated July 8, 1948.

V. The trial court erred in negligence to consider the constitutional and benign principle of social justice in the instant case.

The first three errors are mainly directed against that ruling of the lower court to the effect that the apartment in question is commercial, devoted to business pursuits and does not come within the purview of the Emergency Legislation on house rents. Under the facts set forth in the abovequoted decision—which facts are not disputed—we share with the learned trial judge in his opinion that the ruling of our Supreme Court in the cases of Edilberto

Morales *vs.* Melecio Zamora, G. R. Nos. L–1433–34–35, June 30, 1948 is on all fours with the case at bar. Even assuming for the sake of argument only, that this case involves social justice, we nevertheless find no plausible reason why we should deviate from a well grounded and prevailing ruling on the matter laid down by our Supreme Court. As the place is commercial, the same does not come within the purview of the emergency legislation on housing, and the lease thereof, being on a month-to-month basis, ceases without the necessity of special notice upon the expiration of the term, according to article 1581 of the Civil Code, and "the owner of the land leased has the right not only to terminate the lease at the expiration of the term, but to demand a new rate of rent." (Cortez *vs.* Ramos, 46 Phil., 184.)

Appellant further contends that the lower court erred in *motu propio* reversing its own decision of June 28, 1948, and rendering an entirely different one, dated July 8, 1948—the subject of the present appeal. Counsel argues that under section 5 (*g*) of Rule 124 of the Rules of Court, the inherent power of every court to amend and control its process and orders does not include the power to reverse a promulgated decision. We have carefully gone over the arguments of appellant and found that, instead of condemning the trial court for having set aside *motu propio* his decision of June 28, 1948, he should be commended for having taken the initiative to make his said judgment conformable to law and justice, the moment he discovered his mistake. From Chief Justice Moran's Comments on the Rules of Court, Vol. II, pp. 766–767, we find the following:

> "And since judges are human, susceptible to mistakes, and are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and no appeal has been perfected."
>
> "A judge of First Instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action. The former is not required to hear the parties, if and when a reading of the record convinces him that the order should be revoked because improperly granted or that it should be disapproved."

Certainly, if under such inherent power of the courts, a judge of first instance can legally revoke an order of another judge in the very litigation subsequently assigned to him for judicial action, with more reason he can revoke or reverse his own order or decision, even already promulgated, so as to make it conformable to law and justice, provided that he does so, as was done in this case, before he loses jurisdiction of the case, that is, before the time to appeal has expired.

The judgment appealed from, being in accordance with the law and the evidence, is hereby affirmed in all its parts.

Concepcion and *Dizon, JJ.*, concur.

Judgment affirmed.

[No. 4021-R. Enero 9, 1950]

ANTONIO BAZ en su concepto de Administrador Judicial del Intestado de la finada María Izquierao, demandante y apelado, *contra* SANTIAGO B. GONZÄLEZ, demandado y apelante.

1. PRUEBAS; PRESUNCIONES; SIEMPRE SE PRESUME EL MATRIMONIO; RAZÓN DE LA PRESUNCIÓN.—Es presuncion *juris* que el hombre y la mujer que viven maritalmente han celebrado un contrato legal de matrimonio (art. 69 [bb] Regla 123, Reglamentos de los Tribunales). *"Semper praesumitur pro matrimonio"*—Siempre se presume el matrimonio. La razón de esta presunción está "en que tal es el orden corriente de la sociedad, y si los interesados no fueran lo que aparentaban ser, vivirían en constante infracción de la decencia y de la ley".
2. MARIDO Y MUJER; LA RENUNCIA DE DERECHOS ENTRE CONYUGES DURANTE EL MATRIMONIO, ES NULA.—Si el apelante y la finada eran marido y mujer, es obvio que el documento Exhibito 1, considerado en el concepto que el apelante se lo atribuye—de scr renuncia de derechos—no tiene validez alguna puesto que infringe las disposiciones del Código Civil que declaran nula toda donación hecha entre conyuges durante el matrimonio (art. 1335); que prohiben la renuncia a la sociedad de ganenciales durante el matrimonio a no ser en el caso de separación judicial (art. 1394); y que prohiben, asimismo, la venta recíproca de bicnes entre el marido y la mujer a menos que se hubiesc pactado la separación de bienes o cuando hubiera separación judicial de los mismos bienes autorizada con arreglo al capitulo VI, título III de libro IV del citado, Código (art. 1458). El Juez sentenciador obró con acierto al declarar nulo y si ningun valor el citado documento Exhibito 1.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Davao. Fernandez, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Dominador Zuño for appellant.
Suazo & Espolong for appellee.

GUTIERREZ DAVID, *M.:*

María Izquierdo falleció en Paombong, provincia de Bulacán, el 13 de febrero de 1944. Promovióse su intestado por Caridad Izquierdo en el Juzgado de Primera Instancia de Davao nombrándose a Antonio Baz como administrador judicial. En 21 de abril de 1948 éste dedujo ante el mismo Juzgado de Davao la presente acción para recobrar de Santiago B. Gonzáles la posesión de los terrenos descritos en la demandada, y para exigir de él a que rinda cuentas de los

productos obtenidos de dichos terrenos que la parte actora alega ser de la sociedad conyugal de la finada Maria Izquierdo y el demandado.

El demandado recurre ahora alzada a este Tribunal contra la sentencia dictada en esta causa por el Juzgado de Primera Instancia de Davao en la que se accediió a lo pedido por la parte demandante y se declaro nulo documento Exhíbito 1 presentado por el demandado.

En su contestación, el demandado admite que él y la hoy finada María Izpierdo convivieron como marido y mujer por espacio de 30 acos mas niega haber contraído matrimonio con ella; y alega que María Izquierdo estaba casada con un tal Andres del Monte y que las propiedades en disputa son de la exclusiva propiedad de él (el demandado). Asimismo alega que María Izquierdo ha renunciado a favor de él todo derecho, participación e interés que tenía o pudiera tener en las propiedades en cuestión mediante el documento, marcado como Exhibito 1, que se lee como sigue:

"SEPAN TODOS POR LA PRESENTE VIEREN:

"Yo, María R. Izquierdo, mayor de edad, casada y residente de la ciudad de Davao, Filipinas, por la presente renuncio todos mis derechos de las parcelas tituladas donde aparece mi nombre como dueña de ellas por la sencilla razón que era para cubrir mi verdadero estado ante mis parientes y al público de la ciudad de Davao.

"Ya siento que por mi pobre salud no tardará muy pronto me llevará a otro mundo, es mi voluntad de declarar la verdad que era politica y compasión que Santiago B. Gonález puso minombre en los títulos de las parcelas que él compró. For última vez, yo ruego a Santiago B. González que de la parcela de Dalia a mis hermanitas de padre, Teresita y Carmencita que me han cuidado.

"Esta notita mía se presentará por Santiago B. Gonzales en caso mis hermanos ú otros parientes míos reclamaran partición de aquelas parcelas.

"En testimonio de todo la cual, firmo la presente en la ciudad de Davao, Filipinas hoy a 1 de Septiembre, 1942.

(Fdo) "MARÍA R. IZQUIERDO
(T) *"Maria R. Izquierdo."*

En 9 de julio de 1948, las partes, asistidas de sus respectivos abogados, sometieron al Juzgado el siguiente convenio de hechos:

"Come now the plaintiff and the defendant in the above-entitled case and to this Honorable Court, respectfully submits the following Agreed Statement of Facts:

"1. That the plaintiff is the judicial administrator of intestate estate of the deceased María R. Izquierdo (Especial Case No. 34–R of the Court of First Instance of Davao), of legal age, and a resident of Davao City, and the defendant is also of legal age and a resident of Catitipan, City of Davao, Philippines;

"2. That the deceased María R. Izquierdo lived with the defendant Santiago B. Gonzales for a period of thirty years more or less;

"3. That in the Office of the Register of Deeds of Davao, there appeared registered the following properties:

'(*a*) A parcel of land (lot No. 114 of the Cadastral survey of Davao), with the improvements thereon with an area of 52,099 square meters, more or less, registered in the name of María R. Gonzales, married to Santiago B. Gonzales, covered by Transfer Certificate of Title No. 111–(T–1060) and assessed at ₱1,710 in Tax Declaration No. 18525 of the office of the Assessor of Davao City;

'(*b*) A parcel of land (lot No. 1242–C of the subdivision plan Psd-16472) with an area of 344,797 square meters, more or less, registered in the name of the conjugal partnership of the spouses Santiago B. Gonzales and María Izquierdo de Gonzales, covered by Transfer Certificate of Title No. 1294, and assessed at ₱16,260 in Tax Declaration No. 173 of the office of the Assessor of Davao City;

'(*c*) A parcel of land (lot No. 1050 of the Cadastral survey of Davao) with no existing improvements thereon, with an area of 49,672 square meters, more or less, registered in the name of the spouses Santiago B. Gonzales and María R. de Gonzales, covered by transfer certificate of title No. 679 and assessed at ₱1,700 in Tax Declaration No. 205 at the office of the City Assessor of Davao.'

"4. That María R. Izquierdo was also known by the names of "María R. Gonzales, María Izquierdo de Gonzales and María R. Gonzales";

"5. That since August, 1945, the defendant Santiago B. Gonzales has been in possession of the properties above-described and the one harvesting the products existing therein.

"WHEREFORE, it is respectfully prayed that the above Agreed Statement of Facts be admitted, that the parties herein reserve the right to introduce additional evidence not covered by the above Agreed Statement of Facts, and that judgment be rendered on the Agreed Statement of Facts and such additional evidence as the parties shall introduce in due time."

En apoyo de su apelación el apelante alega que el Juzgado inferior erró por haber declarado que María Izquierdo era la esposa del apelante (Error I); por haber declarado que el Exhíbito 1 es nulo y sin ningún efecto y por haber estimado que las propiedades en cuestión forman parte de los bienes conyugales to María Izquierdo y el apelante (Error II); por no haber admitido y considerado los testimonios de Honorata Teodoro y del demandado referente a las manifestaciones hechas por María Izquierdo de cómo llegó a aparecer su nombre en los certificados de título Exhíbitos A, B y C, no obstante su matrimonio con Andrés del Monte y a pesar de que ella no estaba legalmente casada con el demandado (Error III); por haber ordenado al apelante a entregar las propiedades en disputa al administrador judicial del intestado de la finada María Izquierdo (Error IV) y por haber ordenado al demandado a rendir cuentas sobre los productos de dichas propiedades (Error V).

Es hecho admitido que el demandado-apelante y la hoy finada María Izquierdo han vivido maritalmente por espacio de más de 30 años hasta la fecha de la muerte de la última.

Es presunción *juris* que el hombre y la mujer que viven maritalmente han celebrado un contrato legal de matrimonio (articulo 69 [bb] Regla 123, Reglamentos de los Tribunales). *"Semper praesumitur pro matrimonio"*— Siempre se presume el matrimonio. La razón de esta presunción está "en que tal es el orden corriente de la sociedad, y si los interesados no fueran lo que aparentaban ser, vivirían en constante infracción de la decencia y de la ley".

En lo que atañe al apelante y María Izquierdo, la citada zpresunción está robustecida por los siguientes hechos que se revelan por los autos:

1. La difunta aparece como "María R. Gonzales married to Santiago B. Gonzales" en el certificado de título Exhíbito A. El certificado de título Exhíbito B aparece expedido "in the name of the conjugal partnership of the spouses Santiago B. Gonzales and María Izquierdo de Gonzales". El título Exhíbito C aparece "in the name of the spouses Santiago B. Gonzales and María R. de Gonzales". En el documento de traspaso, Exhibito D, se intercalaron las palabras "casada con Santiago B. Gonzales" como una de las circunstancias personales de la finada María Izquierdo habiéndose hecho tal intercalación por el mismo demandado-apelante.

2. No consta que el apelante se haya ocupado alguna vez en enmendar los citados títulos quitando de ellos el nombre de María Izquierdo.

3. No hay prueba de que los bienes que aparecen en los certificados de título, Exhibitos A, B y C fueron adquiridos con el capital propio del apelante. Antes al contrario, el propósito de él y de la hoy difunta al emgrar a Davao era el de comprar terrenos allá y que en efecto compraron los terrenos descritos en los Exhibitos A, B y C.

4. El hecho de que María Izquierdo, según el documento Exhibito 1, renunciaba sus derechos sobre los bienes en cuestion, prueba que era condueña de los mismos.

Incumbía al apelante la prueba en contra de la citada presunción de matrimonio. Mas el apelante sólo se contentó connegar que él estuviése casado con María Izquierdo y trató de probar por su testimonio y por el de Honorata Teodoro que dicha María les había revelado en vida que ella estaba casada con un tal Andrés del Monte. El Juzgado inferior rechazó con acierto el testimonio de esto testigos por las razones que en la decisión apelada quedan apuntadas como sigue:

"* * * primero, María Izquierdo no puede hoy levantarse de su tumba para impugnar el testimonio de dichos testigos, ésto es, que ella no había a dicho aquellos que estaba casada con Andres del Monte; segundo, no se presentó como prueba el certificado de matrimonio donde consta de que María había contraído matrimanio con Andrés, ni se ha presentado a los testigos intrumentales del contrato de casamiento entre María y Andrés, ni se ha presentado

a las personas que estuvieron presentes en el casamiento, ni el demandado ha explicado por qué no se presentó dichas pruebas; tercero, Honorata es la madre de Teresita y Carmencita mencionadas en el documento (Exh. "1"); cuatro, si María Izquierdo estaba casada secretamente con Andres, la posibilidad es, que los padres de áquella se hubieran enterado de aquel acontecimiento durante los treinta años que María convivió con el demandado, porque si se dá crédito a Honorata, María no guardó en secreto su casamiento, pues la referida Honorata, declarando, asevera que María la había dicho de que ella estaba casada con Andrés, y que varias ocasiones había visto las cartas escritas por aquella a Andrés; quinto, nada hay ni indicios en los autos de la existencia de algún motivo que indujo a María ocultar su casamiento, ni indicios de algún motivo por qué María no convivió con Andrés o de algún motivo que la indujo abandonar a Andrés; y, sexto, leyendo detenidamente en contenido del documento (Exh. "1"), del mismo no se infiere de que María estaba casada con Andrés."

Por las razones que se acaban de mencionar es evidente que la presunción de que el apelante y la finada estaban legalmente casados no ha quedado destruída por las pruebas aportados por la parte apelante.

Si el apelante y la finada eran marido y mujer, es obvio que el documento Exhíbito 1, considerado en el concepto que el apelante se lo atribuye—de ser renuncia de derechos—no tiene validez alguna puesto que infringe las disposiciones del Código Civil que declaran nula toda donación hecha entre cónyuges durante el matrimonio (art. 1334); que prohiben la renuncia a la sociedad de gananciales durante el matrimonio a no ser en el caso de separación judicial (art. 1394); y que prohiben, asimismo, la venta recíproca de bienes entre el marido y la mujer a menos que se hubiese pactado la separación de bienes o cuando hubiera separación judicial de los mismos bienes autorizada con arreglo al capítulo VI, título III del libro IV del citado Código (art. 1458). El Juez sentenciador obró con acierto al declarar nulo y sin ningún valor el citado documento Exhíbito 1.

Por todas las consideraciones expuestas, no hallamos al Juzgado inferior incurso en los errores apuntados por el apelante; y por tanto, confirmamos, en todas sus partes, la decisión de que se apela, con las costas a cargo del apelante.

Reyes y *Ocampo, MM.*, están conformes.

Se confirma la sentencia.

[No. 3659-R. January 10, 1950]

DOMINGO E. LEONOR, plaintiff and appellee, *vs.* FILIPINAS COMPANIA DE SEGUROS, defendant and appellant

1. INSURANCE LAW; FIRE INSURANCE; OTHER INSURANCE CLAUSE; RULE OF IMPUTED KNOWLEDGE.—The principal should not be permitted to disown the acts of its agent. "Any information material to the transaction, either possessed by the agent at the

time of the transaction or acquired by him before its completion, is deemed to be the knowledge of the principal, at least so far as the transaction is concerned, even though in fact the knowledge is not communicated to the principal at all." (Vance on Insurance, 2nd Edition, sec. 117, p. 413.) And it is * * * well settled in the law of fire insurance that the insurer is estopped to plead as a defense the breach of conditions against other insurance or incumbrances, without the consent of the company in writing on the face of the policy, if it appears that when the agent of the company, without authority to deliver or withhold policies, delivered the policy in question, he then knew of the existence of the other insurance or incumbrance." (Insurance Co. *vs.* Fisher, 34 C. C. A. 503, 92 Fed. 500.) This is the rule of imputed knowledge, and is obviously in response to the demands of public policy.

2. ID.; ID.; ID.; INSURANCE CONTRACT, INTERPRETATION OF; CARDINAL RULE; FORFEITURE NOT FAVORED.—It is the cardinal rule on insurance that a policy or insurance contract is to be interpreted liberally in favor of the insured, and strictly against the company (32 C. J., 1152), the reason, being undoubtedly, to afford the greatest protection which the insured was endeavoring to secure, when he applied for the insurance. It is also a cardinal principle of law that forfeitures are not favored and that any construction which would result in a forfeiture of the policy benefits to the person claiming thereunder, will be avoided, if it is possible to construe the policy in a manner which would permit recovery, as, for example, by finding a waiver for such forfeiture." (13 Appleman, Insurance Law and Practice, sec. 7401.)

3. ID.; ID.; ID.; CONSTRUCTIVE NOTICE OF ADDITIONAL INSURANCE.—Irrespective of whether notice had been given in writing to the insurer, provided the latter had become aware of the existence of the additional insurance, said knowledge is deemed a constructive notice, which should not defeat the right of the insured, who, in securing the additional insurance, was not guilty of misrepresentations. From a careful perusal of the case of Insular Life Ass. Co. *vs.* Feliciano (G. R. No. 47593) relied upon by appellant, it is found that the principles announced therein are predicated upon a different set of facts.

4. ID.; ID.; ID.; WAIVER OF ANNULMENT OF CONTRACT.—If, with the knowledge of the existence of other insurances which defendant deemed a violation of the contract, it has preferred to continue the policy, its action amounts to a waiver of the annulment of the contract (19 Cyc., 791, 792; Gonzales La O *vs.* Yek Tong Ling Fire and Marine Insurance Co., 55 Phil., 386.) Appellant did not only fail to repudiate the contract, but, notwithstanding its knowledge of the Rizal Surety Policy, also continued its own policy until almost one year when the building was reduced to ashes, reinsured the same, and kept the premium which it finally returned after the claim had already been filed against it.

5. ID.; ID.; ID.; POLICY, CANCELLATION OF; NOTICE TO INSURED NECESSARY.—The business of fire insurance, being one which affects the economic life of this country and involves public interest, notice to the insured is required, whenever the insurer decides to annul or cancel its policy. The insured should be given a fair chance to defend itself against the effects arising from such annulment or cancellation.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Ramirez & Ortigas for appellant.
Padilla, Carlos & Fernando for appellee.

PAREDES, *J.:*

The Court of First Instance of Manila rendered judgment, ordering the defendant, "Filipinas Compañia de Seguros," to pay the plaintiff Domingo E. Leonor, as assignee of the right and interest of the Federal Films, Inc. in a fire insurance policy, the amount of ₱30,000, secured by the said corporation from defendant on the Cine Marikina.

Sometime in the month of January, 1946, and through the intervention of appellant's soliciting agent Eufronio de Leon, Federal Films, Inc. applied to appellant for a fire insurance coverage in the amount of ₱50,000 on its Cine Marikina. After the risk was inspected by appellant's appraiser, Juan B. Gabriel, appellant informed the Federal Films, Inc. that it could write a policy for the sum of ₱30,000 only. This amount was accepted by the Federal Films, Inc., and on February 21, 1946, appellant insured the Cine Marikina against loss or damage by fire in the said amount of ₱30,000, for a period of one (1) year. The policy issued (Exhibit A) stipulated in its condition 3, that:

"3. The insured shall give notice to the company of any insurance or insurances already effected, or which may subsequently be effected, covering any of the property hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated in or endorsed on this policy by or on behalf of the company, before the occurrence of any loss or damage, all benefits under this policy shall be forfeited."

The policy had also a rider attached to it, as follows:

"OTHER INSURANCE CLAUSE"

"The Insured has declared that other existing insurance on the property covered by this policy amount to ₱———— as stated below and no other insurance therein is allowed, except by the consent of the company endorsed hereon. Any false declaration or breach of this condition will render this policy null and void. ₱———— by policy No. ———— of the ———— ———— Company ————.

"(When there are no other existing insurances, words to that affect must be stated in the policy."

The Federal Films, Inc. declared other insurance under the policy as NIL.

It subsequently turned out that, after being informed that appellant could not insure Cine Marikina for ₱50,000, Federal Films, Inc. applied to the Rizal Surety & Insurance Co. for insurance on the same risk for

₱20,000. And on the same date, February 21, 1946, Cine Marikina was also insured for that amount with the Rizal Surety, under the latter's policy No. 1093 (Exhibit 1).

On February 1, 1947, Cine Marikina was totally destroyed by fire. On March 7, 1946 (Exhibit C–1), Federal Films, Inc. assigned its rights in the insurance policy, Exhibit A, to appellee in order to meet certain obligations due to appellee from the said corporation, although appellee as early as February 5, 1947 (Exhibit D), had already laid claim on the proceeds thereof. Appellant denied liability on the ground that, because the other insurance placed with the Rizal Surety had not been consented to by it and endorsed on Exhibit A, the policy became null and void, pursuant to the terms of its "Other Insurance" clause.

The trial court found (1) that prior to the issuance of its own policy, Exhibit A, the appellant knew that additional insurance on the same risk was going to be applied for by the Federal Films, Inc. with the Rizal Surety; and (2) that fifteen minutes after the issuance of appellant's policy, Eufronio de Leon came to know of the existence of the Rizal Surety policy, and, therefore, sustained the complaint. These findings are assigned as errors, the consideration of which will be taken up in the fundamental issue involved, which is whether or not there had been a violation of the conditions of the policy, Exhibit A, in relation to the "other insurance" clause, as would justify forfeiture of all benefits thereunder.

The facts, as they appear to us, leading to the writing of the policy in question, are that before February, 1946 De Leon, a duly licensed agent of the appellant, went to Apolinario Velasco, President of the Federal Films, Inc. to solicit from him the insurance of the building under consideration. Velasco was persuaded to have it written by the appellant, requesting a coverage of ₱50,000. At that first meeting, it was agreed that De Leon would have an inspector of the appellant examine the building, preparatory to the writing of the insurance requested. At almost the same time, Termulo, representing the Rizal Surety, was soliciting from Velasco, fire insurance of any building under the control of the latter. Velasco promised to give Termulo the insurance of the theater should the same be not written wholly or partially by the appellant. Because of this promise, Termulo had also the inspector of the Rizal Surety inspect the theater. De Leon, subsequently thereafter, advised Velasco that his company was willing to write only ₱30,000; and seeing Velasco's preference to secure a ₱50,000 insurance, De Leon suggested that the ₱30,000 could be written with the appellant, and the balance, by another company, which suggestion was accepted by Velasco, having had the intention, according to him, to give to Termulo the ₱20,000 insurance. In line with the suggestion of De Leon, therefore, two insurance policies cov-

ering the same theater were written on the same day and to expire on the same day and on the same hour, to wit: a policy for ₱30,000 written by appellant on February 21, 1946, and to expire at 4:00 o'clock p.m. on February 21, 1947; and another policy for ₱20,000, written by the Rizal Surety on February 21, 1946, to expire also at 4:00 o'clock p.m., of February 21, 1947. The delivery of the two policies was accomplished on the same day at an interval of about fifteen minutes, such that, after De Leon had delivered the Filipinas policy to Velasco, and while he was still inside the latter's office, Termulo arrived with the Rizal Surety policy. Upon receipt of the Rizal Surety policy, Velasco showed it to De Leon. At that meeting, Termulo became acquainted with De Leon, as the agent who intervened in the writing of ₱30,000.

The records of the case thus abundantly show that appellant, through its agent De Leon, know of the other insurance of ₱20,000. The appellant should not be permitted to disown the acts of its agent. "Any information material to the transaction, either possessed by the agent at the time of the transaction or acquired by him before its completion, is deemed to be the knowledge of the principal, at least so far as the transaction is concerned, even though in fact the knowledge is not communicated to the principal at all." (Vance on Insurance, 2nd Edition, sec. 117, p. 413.) And it is "* * * well settled in the law of fire insurance that the insurer is estopped to plead as a defense the breach of conditions against other insurance or incumbrances, without the consent of the company in writing on the face of the policy, if it appears that when the agent of the company, without authority to deliver or withhold policies, delivered the said policy in question, he then knew of the existence of the other insurance or incumbrance." Insurance Co. *vs.* Fisher, 34 C. C. A., 503, 92 Fed. 500.) This is the rule of imputed knowledge, and is obviously in response to the demands of public policy.

And if this is not enough, there is also ample evidence in the record to support the finding of the lower court, that the appellant knew or, at least, was in a position to know of the Rizal Surety policy, as a result of certain arrangements obtaining among fire insurance companies for reinsurance. It appears that there was a reinsurance agreement between the Philippine Guaranty and the Rizal Surety, and that 80 per cent of Board of Directors of the Philippine Guaranty also composed 80 per cent of the Board of Directors of the appellant company, it being a fact that the Philippine Guaranty and the appellant are sister companies. San Luis, appellant's principal witness, declared:

"Q. Now, this insurance of twenty thousand covering the insurance policy No. 1093, issued by Rizal Surety in favor of Federal Films,

Inc., there is a reinsurance with the Philippine Guaranty, is it not? —A. Yes, sir.

"Q. For how much?—A. I have to refer with the book. I do not know now how much.

"Q. But are you sure there is a reinsurance with Philippine Guaranty?—A. I am sure." (t. s. n., 53–56.)

It would be presumptuous to hold now that, notwithstanding the fact that the appellant company and Philippine Guaranty are practically owned by the same interest, the former was completely ignorant of the reinsurance effected by the Rizal Surety to the Philippine Guaranty, for the sum of ₱20,000.

Indeed, the appellant denied such knowledge, as did its agent De Leon, the only witness on the part of the appellant to the negotiations leading to the writing of the policy. But De Leon's testimony is naturally biased and prejudiced. He could not but testify in appellant's favor. He declared he had no other means of livelihood, having dedicated his "full time to the service of Filipinas Compañia de Seguros." Undoubtedly, this complete economic dependence upon appellant company, would be a compelling motive for him to testify the way he did. (t. s. n., 41–42.) Appellee's witnesses are more reliable and deserving of credence. Termulo declared:

"Q. When I delivered the Rizal Surety policy in the office of the Federal Films, Inc., on Calle Azcarraga, I happened to meet there Mr. De Leon of the Filipinas, Cia. de Seguros, who was then also delivering the Filipinas policy and at the same getting payment of the premium on the said policy.

* * * * * * *

"Mr. Velasco showed the Rizal Surety policy to Mr. De Leon." (t. s. n., 10–11.)

Cecilio Lopez, who is no longer connected with the Federal Films, Inc., testified:

"Q. Do you know if Mr. De Leon of the Filipinas, Cia. de Seguros knew of the existence of such policy, or came to know of the existence of such policy?—A. I am sure he knows about it.

"Q. Why?—A. Because they happened to be there at the same time several times, in the office. They were there soliciting insurance of Mr. Velasco.

"Q. To whom do you refer?—A. Mr. De Leon and Mr. Termulo.

"Q. Aside from seeing them soliciting insurance of Mr. Valasco, did you see them also together on other occasions, after the solicitation was over?—A. Yes, when they were delivering the policies.

"Q. To whom are you referring now?—A. To both agents, Mr. De Leon and Mr. Termulo.

* * * * * * *

"Q. You said that Mr. Termulo and Mr. De Leon were delivering their respective policies on the same occasion, do you know if each of them was aware of what the other was doing?—A. Yes." (t. s. n., 22–23.)

Velasco testified:

"Q. * * * Now, when Mr. Termulo delivered to you the policy of Rizal Surety, was Mr. De Leon still in your office yet?—A. Yes, sir.

"Q. And what did Mr. De Leon say upon seeing Mr. Termulo delivering to you the policy of Rizal Surety?—A. When Termulo delivered to me the policy De Leon inquired, what is that? And I told him, this is the policy for the twenty thousand. And then he said, that is alright, you get the fifty thousand from two companies.

* * * * * * *

"Q. Did you show Mr. De Leon the policy of the Rizal Surety delivered to you by Mr. Termulo?—A. Yes, I showed it to him.

"Q. Did he look at it?—A. Yes, he did." (t. s. n., 10–12.)

The learned trial court, which had the opportunity to observe the demeanor of these witnesses, did not fail to note the sincerity of the witnesses for the appellee. We have no reason to alter the conclusion of the lower court in this respect.

Appellant contends that "unless notice is given of any insurance or insurances already effected or which may subsequently be effected covering the property insured, by it, and the particulars of such insurance or insurances stated in or endorsed on said policy or on behalf of the company before the occurrence of any loss or damage, all benefits under said policy shall be forfeited" (Condition No. 3 of its policy), and that under such condition, failure on the part of the insured to take all reasonable diligence in giving due notice of any insurance or insurances to said appellant and having the same *indorsed on its policy* or otherwise accepted in writing, is non-compliance with and violation of said condition. Counsel for appellant is unduly construing strictly the provision contained in condition No. 3 of its policy, when it is the cardinal rule on insurance that a policy or insurance contract is to be interpreted liberally in favor of the insured, and strictly against the company (32 C. J., 1152), the reason, being undoubtedly, to afford the greatest protection which the insured was endeavoring to secure, when he applied for the insurance. It is also a cardinal principle of law that forfeitures are not favored and that "any construction which would result in a forfeiture of the policy benefits to the person claiming thereunder, will be avoided if it is possible to construe the policy in a manner which would permit recovery, as, for example, by finding a waiver for such forfeiture." (13 Appleman, Insurance Law and Practice, sec. 7401.) The technicalities invoked by the appellant to annul and avoid the policy issued by it, if sustained, specially under the extraordinay circumstances of this case, will enrich insurance companies at the expense of the insured who, for lack of knowledge of these technicalities, may fail to comply with the manner and form exacted

by said insurance companies. While it is conceded that an insurance contract is a special contract and its compliance should be governed by the terms and conditions contained therein, we are, however, of the opinion that knowledge on the part of the appellant of the existence of the additional policy issued by the Rizal Surety, is a notice in fact, that should be construed as a substantial compliance with condition No. 3 of the policy. As well stated by the learned trial judge, "The purpose of the law in requiring notice of the existence of the additional insurance is to avoid insuring a given property in excess of its actual and real value, which may lead the insured to relax in taking all necessary precautions to avoid loss or damage, because when such loss or damage occurs he would not be the loser, but the insurance company." The main purpose, therefore, of said notice is to avoid fraudulent insurance, and this has been sufficiently served. As the property insured was worth ₱65,000, and the value of the two policies in question is ₱50,000, the danger of overinsurance is well nigh below the mark. So that, irrespective of whether notice had been given in writing to the herein appellant, provided the latter had become aware of the existence of the additional insurance, said knowledge is deemed a constructive notice, which should not defeat the right of the insured, who, in securing the additional insurance, was not guilty of misrepresentations. We have made a careful perusal of the case of Insular Life Ass. Co. *vs.* Feliciano (G. R. No. 47593) relied upon by appellant, and we find that the principles announced therein are predicated upon a different set of facts.

It has been held that "If, with the knowledge of the existence of other insurances which defendant deemed violations of the contract, it has preferred to continue the policy, its action amounts to a waiver of the annulment of the contract (19 Cyc., 791, 792)." (Gonzales La O *vs.* Yek Tong Ling Fire and Marine Insurance Co., 55 Phil., 386.) Appellant did not only fail to repudiate the contract, but, notwithstanding its knowledge of the Rizal Surety policy, also continued its own policy until almost one year when the building was reduced to ashes, reinsured the same, and kept the premium which it finally returned after the claim had already been filed against it.

Appellant claims that it did not have the duty to advise the Federal Films, of the cancellation of the policy issued in its favor, as the act of the latter, in securing another insurance policy without notice to the appellant, amounts to a willful and deliberate avoidance of the policy on its own part. Appellant's stand in this respect is not only unfair but also is replete with dangerous effects. If, as appellee puts it, upon the expiration of the period of one

year, effectivity of the policy, without a fire having occurred, the insured sought the renewal of the policy for another year, and succeeding years, until, say the ninth, when the building is burned, then the insurer would have received the premuims for eight (8) years, without saying anything at all, and would only offer to return the premuim for the ninth year, because, then, it discovered that the policy was null and void on account of the alleged violation of the "other insurance" clause. The business of fire insurance, being one which affects the economic life of this country and involves public interest, notice to the insured is required, whenever the insurer decides to annul or cancel its policy. The insured should be given a fair chance to defend itself against the effects arising from such annulment or cancellation.

Appellant alleges that the Rizal Surety policy was such a subsequent "other insurance", as would preclude appellee's recovery, because of the alleged failure of the Federal Films to give notice of the existence thereof to appellant, in view of the fact that the Rizal Surety's policy was delivered fifteen minutes later than the appellant's policy. We believe, however, that the mere fact of a later delivery, did not make the Rizal Surety policy a subsequent insurance. While 15 minutes intervened between the actual delivery of the policies, the fact remains that in the negotiations leading to the writing of both policies, De Leon was an active party, and that both policies were written to become effective on February 21, 1946 and to terminate each at 4 o'clock on February 21, 1947, which simply demonstrates that the writing of both policies to make a total coverage of ₱50,000, was a previously discussed scheme of the appellant, through its agent De Leon, the Rizal Surety, through its agent Termulo, and the Federal Films, through its President Velasco. The interval of 15 minutes between the delivery of the two policies, is immaterial to the insurance liability. It would be absurb to compel the insured in case of coverage of a property by two insurance companies "to glare at a stop-watch every time delivery of the policies is made, just to make sure that the two policies reach his hands at exactly the same time." Even granting that the Rizal Surety is a subsequent policy, appellant would still be liable, not only because of the doctrine of imputability of knowledge, heretofore discussed, but also because of the acts of appellant's agent who suggested the arrangement of securing the full coverage, by dividing the total insurance between two companies. Appellant should not now be heard to complain after liability had attached, due to the accidental burning of the building insured. (45 C. J. S., sec. 706, p. 673.) A case of estoppel having been established against the appellant, the latter is as much

bound, under the policy, as if it had actually consented and endorsed its consent to the other insurance.

Our attention is invited by appellant to condition 20 of the policy, Exhibit A, which provides:

> "20. Every notice and other communication to the company required by these conditions must be written or printed."

contending thereby, that a verbal notice to any one of the company's employees, is not a compliance with condition No. 3 and the "other insurance" clause. While the object of condition No. 3 is to avoid fraud, because without it, an insured may circumvent forfeiture, by merely alleging that he had given verbal notice to any one of the employees of the insurer, it is not, however, just to deny the right of the insured to recover, if he had *in fact* given notice, verbally though it might be. We can not close our eyes to the truth of the notice, given to the insurer in this case. Moreover, contracts of insurance are, as a general rule, contracts of adhesion made under practices developed in an age of mass production. What busy merchant or ordinary layman, for that matter, would take the pains of reading word per word a printed policy, written in microscopic types, with lengthy conditions and stipulations! How many would not rely on the good faith, representations and conduct of the insurer's duly authorized agents! Insurers who really act for the welfare of the public, should apprise at least their insured of the technical pitfalls which are ahead of them. Hair-splitting technicalities that do not square with the liberal tendency in which insurance contracts are conceived and with the ends of justice, do not deserve serious consideration. This being simply a case of technicality versus truth and justice, the choice is easy to make. We also find that appellant's defense lacks congruity. If it is true, as alleged, that it came to learn of the existence of the Rizal Surety policy immediately after the fire, it can not be understood why it did not seek the avoidance of the contract at that time or immediately thereafter, by returning the premium paid on the policy. If it is true that appellant was not convinced of its duty to pay the proceeds of the policy, it was not explained why there was no denial of liability in its communications to the insured (Exhibits D to H), based on the existence of the other insurance policy. The appellant allowed the period of about three months after its alleged discovery of the Rizal Surety policy, before setting up such defense.

No error having been found in the judgment appealed from, the same is hereby affirmed, with costs against the appellant. So ordered.

Labrador and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 3238-R. May 29, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ROMEO GUANZON, ARMANDO GUSTILO, CESAR FONTANILLA, PEDRO REGALADO, and JOSE REGALADO, defendants and appellants.

1. CRIMINAL LAW; EVIDENCE; COURTS; DUTY OF COURT TO HARMONIZE TESTIMONIES.—It is a well-established rule that the Court should attempt to harmonize testimonies rather than to conclude hastily that one or the other witness was not telling the truth.
2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; EACH CIRCUMSTANCE SHOULD NOT BE CONSIDERED ISOLATEDLY FROM THE REST.—It is basic in the consideration of circumstantial evidence that while each circumstance by itself may not carry weight, yet all of them taken together may be sufficient to carry conviction, because circumstances pointing to the same conclusion do not have their weight merely added but multiplied, so that each indicium, although inconclusive by itself, reinforces all the others pointing in the same direction (Coggleshall *vs.* U. S., 17 L. Ed., 911, 914; Castle *vs.* Bullard, 16 L. Ed., 428-429). Whether all indicia considered together possess the requisite weight must ever remain a matter of personal conviction on the part of the members of the court, for which no hard and fast rules exist.
3. ID.; SERIOUS PHYSICAL INJURIES; CONSIDERATION NOT LIMITED TO PERIOD REQUIRED FOR HEALING OF WOUNDS.—The criminal law has taken into account that the injuries may be more extensive than the surface or physical lesions seem to warrant, and for this reason, in drawing the line between serious, less serious and slight physical injuries, consideration is not limited to the period required for the healing of the wounds caused, but admits as an alternative criterion the inability of the injured party to perform his usual work. The law bears in mind that there are injuries that may be internal and which may not heal simultaneously with the external lesions.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Arellano, J.

The facts are stated in the opinion of the court.

Laurel, Sabido, Almario & Laurel for appellants.

Assistant Solicitor General Ruperto Kapunan, Jr. for appellee.

RESOLUTION

REYES, J. B. L., *J.:*

The appellants have filed a motion to reconsider urging that in our decision of January 9, 1950, we have incurred in errors of fact and of law that warrant its reversal.

I

With regard to the issues of fact, the first one urged by the motion is the finding on the manner in which Jesús Araneta was wounded on the head. By photographs taken *ex parte* the motion tries to demonstrate that it was impossible for Armando Gustilo to inflict wounds on the posterior occipital and right parietal regions of the head of Jesús Araneta because at the time that the blows were

inflicted Romero Guanzon had turned Jesús towards him and landed a blow on his left eye. We find the contention groundless because of its fundamental assumption that the delivery of the blows by Gustilo and Guanzon was simultaneous when, as a matter of fact, the evidence shows that it was not so, although the blows did come in quick succession. Furthermore, the photographs appended to the motion reveal that the alleged improbability of the version of the prosecution depends upon a combination of variable circumstances, such as the angle of approach of the aggressors and the extent of the twist given to Araneta's head and body. Having been taken without the intervention of the prosecution, the photographs do not constitute, in our opinion, a reliable basis for rejecting the testimonial evidence for the State.

As to the second objection that it was error to find that Gustilo did not deliver his revolver to Eusebio Lopez before the fracas, suffice it to say that the finding is supported by the testimony of policeman Bayona to the effect that Armando Gustilo surrendered the pistol directly to him and did not ask Lopez for it, and Bayona's statements, as we have pointed out in our decision, find support in the details assailed in the motion as well as in the testimonies of the Aranetas and of Pompeyo Querubin.

That Gustilo held the pistol by the handle and not by the barrel in hitting Jesús Araneta was directly established by the evidence for the prosecution. The Court, in its pronouncement under attack, has pointed out the reasons that negative the theory of the defense that Gustilo would have naturally grasped the weapon by the barrel. The readiness with which Armando Gustilo aimed the pistol at Juan Araneta, to forestall any intervention on his part, reinforces our conclusion that Armando held the gun by its butt because he anticipated the necessity of using the weapon against others besides Jesús Araneta. What to the court appear to be logical inadequacies in the defense version are termed by the movants, for obvious reasons, to be mere suppositions and conjectures. It is a matter of viewpoint.

In all its arguments the defense does not explain how the edges of the railing, which are at *right angles* to each other, could cause two vertical and *parallel* wounds on the human head, the latter being spheroid in shape; nor how the head could come in contact with the curved portion of the railing to any large extent, since the circular outlines of both could not be in contact except for a very short portion of the circumferences. No amount of argument can buttress a version that is contrary to physical facts. The lame explanation that the Court proceeded on the basis of the scars and not the wounds themselves

has no merit; for a horizontal wound could not cause a vertical scar, in the absence of exceptional circumstances that have not been proved to exist in this case.

The conclusion of the court that the original collective assault on Jesús Araneta had degenerated practically into a struggle between Romeo Guanzon and Jesús Araneta at the time that defense witness Blanco separated the two is a reconciliation of the versions of Blanco and the prosecution witnesses. It is a well-established rule that the court should attempt to harmonize testimonies rather than to conclude hastily that one or the other witness was not telling the truth.

The mere fact that Guanzon did not retaliate upon Jesús Araneta on the other occasions that they met after the original incident and before the assault of May 17th does not negative the existence of resentment on the part of Guanzon towards the Aranetas, because the apparent passivity of the former is susceptible of other explanations, especially because on those other occasions, as attested by the evidence on record, Romeo Guanzon and his friends did not have the superiority necessary to overwhelm their adversaries to the extent possible at the time of the assault on May 17, 1948. It is extremely significant, on the other hand, that in none of the occasions when Guanzon and Araneta met between the 7th and the 17th of May did the conduct of either party evince a resumption of friendly relations and intercourse.

II

The alleged prejudice of the trial court does not appear to us sufficient to warrant a finding that the defense was materially handicapped in any way in the preparation of its case. Even if we assume that there were political considerations influencing the conduct of the prosecution, such political enmity would not have altered the basic physical facts in the case that support the State version and rebut that of the defense. This court in its decision has already noted the bias exhibited by the witnesses of both sides and has given due allowance for the same. Neither do we think it proper to comment on the acquittal of Balbino Guanzon, since such acquittal is conclusive on his criminal responsibility. It would serve no useful purpose for this court to express its opinion that the trial court was in error in ordering such acquittal, and for this reason it did not consider that the discharge of Balbino should necessarily lead to the acquittal of the other defendants, as the defense now contends.

III

On the alleged errors of law, suffice it to note that the defense's argument against the finding of conspiracy among

the appellants is due to the fact that it insists on considering each circumstance isolatedly from the rest. It is basic in the consideration of circumstantial evidence that while each circumstance by itself may not carry weight, yet all of them taken together may be sufficient to carry conviction, because circumstances pointing to the same conclusion do not have their weight merely added but multiplied, so that each indicium, although inconclusive by itself, reinforces all the others pointing in the same direction (Coggleshall *vs.* U. S., 17 L. Ed., 911, 914; Castle *vs.* Bullard, 16 L. Ed., 428-429). Whether all indicia considered together possess the requisite weight must ever remain a matter of personal conviction on the part of the members of the court, for which no hard and fast rules exist.

The contention that the appellant should be convicted of *lesiones leves* merely because the wounds on the head of Jesús Araneta healed completely within nine days, disregards the fact that the injuries of Araneta, according to the evidence, were not limited to the surface wounds. The criminal law has taken into account that the injuries may be more extensive than the surface or physical lesions seem to warrant, and for this reason, in drawing the line between serious, less serious and slight physical injuries, consideration is not limited to the period required for the healing of the wounds caused, but admits as an alternative criterion the inability of the injured party to perform his usual work. The law bears in mind that there are injuries that may be internal and which may not heal simultaneously with the external lesions. This is the case of Jesús Araneta since the evidence discloses that notwithstanding the healing of the scalp wounds on the 25th of May he was still suffering from dizziness due to the concussion resulting from the blows on the temple. His inability to walk correctly since he entered the hospital is evidentiary of such concussion; and while proof of the reality of the organic disfunction may rest primarily on the testimony and statements of the injured party, that fact by itself would not justify the court in disregarding it, particularly where no evidence of malingering has been presented. Jesús Araneta was confined in a public hospital during the period of his illness, and the defense could have obtained permission from the proper authorities to have him subjected to tests for the purpose of verifying the true extent of his injuries. That it failed to do so is no evidence that the conclusions reached by the court are erroneous.

The motion to reconsider is denied.

Gutierrez David and *Ocampo, JJ.*, concur.

Motion denied.